



JOHN J. TECKLENBURG  
MAYOR

*City of Charleston*  
*South Carolina*  
*Clerk of Council Department*

VANESSA TURNER MAYBANK  
CLERK OF COUNCIL

**NOTICE OF MEETING**

A meeting of the Committee on Real Estate will be held beginning at 4:00 p.m., Monday, March 12, 2018, at City Hall, 80 Broad Street, First Floor Conference Room. The agenda will be as follows:

**AGENDA**

Invocation – Councilmember Waring

**Approval of Minutes:**

- February 26, 2018

- a. Authorize the Mayor to execute the First Amendment to Preliminary Site Work Agreement to allow the 99 WestEdge developer to perform the work required to improve and enlarge the 180 Lockwood Municipal Parking Lot. (180 Lockwood; TMS: 460-00-00-013)
- b. Authorize the Mayor to execute the Purchase and Sale Agreement for the City to acquire the Archer School site from Charleston County School District for future development to include affordable housing. The property is owned by the Charleston County School District. (220 Nassau Street; TMS: 459-05-01-067)
- c. Authorize the Mayor to execute on behalf of the City a Real Estate Note and Mortgage Modification Agreement, clarifying that the original Note given to the City by Latrice R. Evans, secured by a mortgage on property located at 1825 Austin Avenue, is subject to a balance reduction schedule and debt forgiveness provision (1825 Austin Avenue; TMS: 464-01-00-132) [Ordinance]
- d. Request authorization for the Mayor to execute the Purchase and Sale Agreement for 101 Broad Street. The property is owned by the City of Charleston. (TMS: 457-12-04-016) [Ordinance]

e. Executive Session:

- i. Discuss property acquisitions and easements required for the Calhoun West Drainage project. Action may or may not be taken.
- ii. Discuss property acquisition and easements required for the Forest Acres Phase 2a storm water drainage project. Action may or may not be taken.
- iii. Request authorization to acquire a new 10 foot storm water easement on property located at 815 Colony Drive. (TMS: 418-15-00-017) Action may or may not be taken.
- iv. Discussion regarding potential contractual arrangements in connection to 113 Calhoun Street and Emanuel A.M.E. Church. Action may or may not be taken. (*Councilmember Waring*)

f. Consider the following annexation:

- Property on Zelasko Road (TMS# 313-00-00-335) 1.19 acres, Johns Island (District 5). The property is owned by Larry McCutchen.

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to [schumacherj@charleston-sc.gov](mailto:schumacherj@charleston-sc.gov) three business days prior to the meeting.

a.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 180 Lockwood

TMS: 460-00-00-013

PROPERTY OWNER: City of Charleston

ACTION REQUEST: Authorize the Mayor to execute the First Amendment to Preliminary Site Work Agreement to allow the 99 WestEdge developer to perform the work required to improve and enlarge the 180 Lockwood Municipal Parking Lot.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head		<input type="checkbox"/>
Legal Department	<u>Jane Borch Jones</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Matthew R. Dwyer</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved?\* Yes ☒ No ☐

\*If approved, provide the following: Dept/Div. 022 616 Acct: 58240

Balance in Account \$ 800,000 Amount needed for this item \$ 699,878

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 180 Lockwood

TMS: 460-00-00-013

PROPERTY OWNER: City of Charleston

ACTION REQUEST: Authorize the Mayor to execute the First Amendment to Preliminary Site Work Agreement to allow the 99 WestEdge developer to perform the work required to improve and enlarge the 180 Lockwood Municipal Parking Lot.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

### **ACTION:** What action is being taken on the Property mentioned?

☐ **ACQUISITION** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

☐ **FORECLOSURE**  
Terms: \_\_\_\_\_

☐ **PURCHASE**  
Terms: \_\_\_\_\_

☐ **CONDEMNATION**  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_

☐ **SALE** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_

☐ **EASEMENT** Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

## COMMERCIAL REAL ESTATE FORM

☐

PERMANENT

Terms: \_\_\_\_\_

☐

TEMPORARY

Terms: \_\_\_\_\_

☐

LEASE

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

☐

INITIAL

Terms: \_\_\_\_\_

☐

RENEWAL

Terms: \_\_\_\_\_

☐

AMENDMENT

Terms: \_\_\_\_\_

☒

Improvement of Property

Owner: \_\_\_\_\_

City of Charleston

Terms: \_\_\_\_\_

Allow the 99 WestEdge developer to perform the work required to improve and enlarge the 180 Lockwood Municipal Parking Lot.

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: \_\_\_\_\_

Signature: \_\_\_\_\_

*C. Carducci*

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).

FIRST AMENDMENT TO  
PRELIMINARY SITE WORK AGREEMENT

THIS FIRST AMENDMENT TO PRELIMINARY SITE WORK AGREEMENT (this "**Amendment**") is made and entered into as of the \_\_\_\_ day of March, 2018, by and between the CITY OF CHARLESTON, a South Carolina municipal corporation (the "**City**"), and 99 WEST EDGE DEVELOPER, LLC, a South Carolina limited liability company ("**Developer**"). The City and Developer are hereinafter collectively referred to as the "**Parties**."

WITNESSETH:

A. The City and Developer are parties to that certain Preliminary Site Work Agreement dated March 25, 2016 (the "**Original Agreement**") with respect to certain pre-development work performed by Developer in connection with Developer's mixed retail and residential project located in Charleston, South Carolina originally known as 99 West Edge (the "**99WE Project**") and the related construction of a seven (7) level parking deck on certain adjacent property of the City.

B. The City desires to engage the Developer to perform the additional work described in the attached **Exhibit A** (the "**Municipal Lot Work**") on certain property owned by the City and located adjacent to the 99WE Project (the "**Adjacent City Property**").

C. The Parties desire to modify and amend the Original Agreement in certain respects with respect to the Municipal Lot Work.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agrees as follows:

1. Defined Terms.

(a) All capitalized terms not otherwise defined in this Amendment shall have the meaning given such terms in the Original Agreement.

(b) As used in this Amendment, the term "Supplemental Development Costs" shall mean all hard and reasonable and customary soft costs incurred by Developer in connection with the performance of the Municipal Lot Work, including without limitation all construction or other costs and fees incurred under any Contracts, all permitting, testing, and inspection fees (including legal costs incurred in connection therewith), the cost of posting any bonds or other security required to be provided by any Contractors or by Developer pursuant to the terms of this Amendment or in order to obtain any required permits or approvals, costs of the premiums for insurance which Developer is required to provide by this Amendment or which is deemed necessary by Developer, losses, expenses, or damages not compensated by insurance or otherwise, and the cost of corrective work, but excluding, however, transportation, travel, and hotel expenses of Developer, incurred in connection with the performance of the Municipal Lot Work (or otherwise). As used herein, Supplemental Development Costs also shall specifically exclude the Supplemental Development Fee payable to Developer pursuant to this Amendment.

2. Municipal Lot Work. The Original Agreement is hereby amended to provide that, in addition to the Pre-Development Work described therein, Developer shall perform or cause the performance of the Municipal Lot Work in a good, workmanlike, and commercially reasonable manner, with the standard of diligence and care normally employed by a duly qualified person in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall retain at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the construction and performance of the Municipal Lot Work. The Developer shall coordinate with the City in determining the scheduling and phasing of construction of the Municipal Lot Work under this Amendment to ensure that all construction is performed in such a manner so as to not cause any unnecessary interruption or undue interference with the use of the City Property and City operations.

3. Approval of Plans. The plans for the Municipal Lot Work listed or described on Exhibit B attached hereto have been approved by Developer and the City.

4. Development Schedule. Attached hereto as Exhibit C is the schedule for performance of the Municipal Lot Work. Subject to Excused Delays and to any limitations or alterations made to accommodate City operations as contemplated in Section 2, the Developer shall complete the Municipal Lot Work within the time line set forth in the schedule attached hereto as Exhibit C.

5. Supplemental Development Budget. Attached hereto as Exhibit D is the budget for the Municipal Lot Work (the "**Supplemental Development Budget**"). The Supplemental Development Budget includes a detailed cost breakdown (a "**Schedule of Values**") allocating values to various portions of the Municipal Lot Work which has been approved by the City, as well as a contingency line item and a line item for a development fee (the "**Supplemental Development Fee**"). Developer shall employ its best efforts to ensure that the actual costs incurred for each category set forth in the Supplemental Development Budget shall not exceed the amount budgeted for such category. Developer hereby guarantees that the Supplemental Development Costs applicable to the Municipal Lot Work will not exceed the sum of \$\_\_\_\_\_.00 (the "**Guaranteed Municipal Lot Amount**"). **In furtherance of the foregoing, Developer hereby agrees that if and to the extent the sum of Supplemental Development Costs for the Municipal Lot Work exceeds the Guaranteed Municipal Lot Amount for any reason, then Developer shall pay any such excess costs (or, as to the Supplemental Development Fee, waive the excess portion thereof) as and when such costs are due and payable.** Nothing contained herein shall constitute a guarantee by Developer that the amount allocated to any individual category or line item in the Supplemental Development Budget shall not be exceeded, it being expressly agreed that Developer (i) shall be entitled to reallocate sums in the contingency line item of the Supplemental Development Budget to any other line item of the Supplemental Development Costs as Developer deems appropriate from time to time, and (ii) shall be entitled to reallocate savings in any category or line item of the Supplemental Development Costs contained in the Supplemental Development Budget to any other category or line item as Developer deems appropriate from time to time.

Notwithstanding the foregoing, it is expressly agreed that Developer shall not be entitled to apply or reallocate sums in the Supplemental Development Budget to any costs incurred by

Developer in connection with the performance of the Pre-Development Work described in the Original Agreement, or to the Development Fee payable in connection therewith.

6. Supplemental Development Fee. As compensation for the services of Developer under this Amendment, Developer shall be entitled to receive an amount equal to three percent (3%) of all Supplemental Development Costs incurred by Developer in connection with the Municipal Lot Work (the “**Supplemental Development Fee**”). Such amount shall be payable in monthly installments based on the Supplemental Development Costs incurred by Developer for the preceding calendar month. In the event that Supplemental Development Costs are less than the Guaranteed Municipal Lot Amount, Developer shall be entitled to forty-five percent (45%) thereof (the “**Municipal Lot Savings Fee**”).

7. Funding of Supplemental Development Costs. The City agrees to fund the Supplemental Development Costs for the Municipal Lot Work, up to the Guaranteed Municipal Lot Amount, in accordance with the procedures, and subject to the terms and conditions, set forth in the Original Agreement with respect to the funding of Project Costs for the Pre-Development Work described therein. Notwithstanding the foregoing, the City shall not be required to deposit the Municipal Lot Guaranteed Amount with Escrow Agent, but rather shall fund the Supplemental Development Costs for the Municipal Lot Work directly to Developer based on Disbursement Requests for Supplemental Development Costs submitted to the City by Developer in accordance with Section 3.4 of the Original Agreement, and subject to the terms and conditions set forth in Sections 3.5, 3.6, and Article IV of the Original Agreement.

8. General. Except as otherwise expressly provided in this Amendment, the Municipal Lot Work shall be performed by Developer upon the terms and conditions applicable to the Pre-Development Work under the Original Agreement. To that end, except to the extent otherwise expressly provided in this Amendment, all provisions of the Original Agreement relating to the Pre-Development Work shall hereafter be deemed also to apply to the Municipal Lot Work.

9. Indemnity Limitation. Section 2.8 of the Original Agreement is hereby modified and amended to provide that, notwithstanding anything provided in Section 8 above, with regard to the Municipal Lot Work, Developer shall have no obligation to indemnify the City for claims resulting from or related to the pre-existing environmental condition of the Adjacent City Property.

10. Ratification. Except as specifically provided herein, the terms and provisions of the Original Agreement shall remain unchanged and shall remain in full force and effect. As modified and amended hereby, the Original Agreement is hereby ratified and confirmed in all respects.

11. Counterparts; Facsimile Signatures. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile signatures appearing herein shall be binding and enforceable as an original.



12. Successors and Assigns. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

WITNESSES:

CITY OF CHARLESTON, a South Carolina  
municipal corporation

\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESSES:

99 WEST EDGE DEVELOPER, LLC, a Georgia  
limited liability company

\_\_\_\_\_  
  
\_\_\_\_\_

By: 99 West Edge Manager, LLC, its  
Administrative Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Person

EXHIBIT A  
MUNICIPAL LOT WORK

**"EXHIBIT A"****PROJECT NARRATIVE**

180 Lockwood Parking Improvements is located on a 4.6-acre parcel located in the City of Charleston identified as TMS No. 460-00-00-013 by Charleston County GIS.

The project parcel is currently developed for municipal use with structure(s), parking, and associated infrastructure. The area of this parcel where development is proposed, herein referred to as the project site, is primarily paved as an asphalt parking lot with underground infrastructure serving the Municipal Complex.

Prior to this existing development, the project site served as a municipal landfill. Evidence of this use is still present primarily in the degree of continual settlement.

The project site is bounded by the following:

- NW – Fishburne Street
- NE – 99 WestEdge Building
- SE – Municipal Complex
- SW – Lockwood Boulevard

**PROPOSED DEVELOPMENT**

The proposed development will include the construction of 28 new parking spaces, a 24' drive aisle, and 6 landscaped parking lot islands. The new parking lot will have two fifty-foot sections of 5-foot sidewalk located at the entrance of the lot. It will also include relocated light poles from the existing lot to serve the proposed development. Drainage from the site will be handled with two proposed grate inlets, one storm manhole, inlet filters/check valves and 222 LF of 15" RCP that ties into the existing onsite drainage. The proposed pavement section will include 2" Type C surface course and 6" base course on top of compacted subgrade. The existing asphalt will also be overlaid with a layer of Type C surface course. The proposed lot will be replanted with an array of different trees and shrubs.

**LIMITATIONS**

Formal electrical drawings have not been received. Based on the hand sketched conceptual layout and conversations with Carolina Time it is estimated the project will need:

- 2 x 2" conduits (with pull boxes every 100') from a point at NE corner of sallyport over to new exit gate and then on to new entry gate – estimated to be a total of 675';

- Saw cutting and patching will be required ~125' of the existing sallyport final asphalt and the binder coat at the service area; plus a new concrete island and bollards for the new gate.

Ultimately an electrical design for this work will be required for permitting, to be provided by the City of Charleston, through Carolina Time.

Without a design, the price for electrical work cannot be finalized. Included in Exhibit D are appropriate amounts based on estimated quantities from Carolina Time's direction. Cost could be added once a design is established and approved.

EXHIBIT B  
PLANS FOR MUNICIPAL LOT WORK

**"EXHIBIT B"**

**SHEET LIST TABLE**

- C0 – COVER SHEET
- G1.1 – GENERAL NOTES AND INDEX
- V1.1 – EXISTING CONDITIONS
- V1.2 – DEMOLITION & TREE REMOVAL PLAN
- C1.1 – SITE PLAN
- C1.2 – ACCESSIBLE ROUTE PLAN
- C1.3 – DIMENSIONAL PLAN
- EC1.1 – SWPPP NOTES
- EC1.2 – SWPPP CHARTS
- EC1.3 – INITIAL DISTURBANCE PLAN
- EC1.4 – CONSTRUCTION & STABILIZATION PLAN
- EC1.5 – SWPPP DETAILS
- EC1.6 – SWPPP DETAILS
- C2.1 – FIRE PROTECTION PLAN
- C3.1 – PAVING GRADING & DRAINAGE PLAN
- C3.2 – DRAINAGE PROFILE
- C3.3 – PAVING GRADING & DRAINAGE DETAILS
- C3.4 – PAVING GRADING & DRAINAGE DETAILS
- L1.1 – LANDSCAPE PLAN
- L2.1 – PLANTING DETAILS & NOTES
- L2.2 – LANDSCAPE SPECIFICATIONS
- L2.3 – GRASSING SPECIFICATIONS

EXHIBIT C  
DEVELOPMENT SCHEDULE



Exhibit C - Schedule for Municipal Lot Work		
Description	Work Days	
Notice to Proceed		
Mobilization	2	
SWPPP and Tree Protection Install	4	
Sawcut Asphalt and Site Demo	4	
Storm Drainage	7	
Grade and Balance Site	5	
Base Install, Grade, and Compact	5	
Fine Grade Base and Site	2	
Mill Parking Lot	2	
Pave Parking Lot	2	
Line Striping	1	
Landscape and Irrigation	7	
Site Cleanup	1	
Total Work Days	40	

EXHIBIT D  
SUPPLEMENTAL DEVELOPMENT BUDGET

## EXHIBIT D

## SUPPLEMENTAL BUDGET FOR MUNICIPAL LOT WORK

	RESURFACING EXISTING LOT	REGRADING/NEW STORM DRAINAGE	37 NEW SPACES	TOTAL
<b>GMP HARD CONSTRUCTION COSTS</b>				
General Conditions	\$ 11,447	\$ 9,297	\$ 12,057	\$ 32,800
Direct Costs				
Subcontractor GenCond/Direct Costs	\$ 11,534	\$ 7,326	\$ 13,941	\$ 52,476
Resurface	\$ 100,085	\$ -	\$ -	\$ 100,085
Earthwork/Grading	\$ -	\$ 19,218	\$ 19,218	\$ 38,435
Storm Drainage	\$ -	\$ 44,352	\$ -	\$ 44,352
New Base & Paving	\$ -	\$ -	\$ 77,859	\$ 77,859
Concrete Curb & Gutter	\$ -	\$ -	\$ 23,895	\$ 23,895
Soil Disposal Allowance	\$ -	\$ 53,832	\$ -	\$ 53,832
Dewatering Allowance	\$ -	\$ 3,200	\$ -	\$ 3,200
Relocate Light Poles	\$ 19,790	\$ -	\$ -	\$ 19,790
Place Parking Equipment Conduit				
675' 2ea 2" buried conduit/pull boxes	\$ 20,400	\$ -	\$ -	\$ 20,400
125' Cut and Patch Asphalt	\$ 2,500	\$ -	\$ -	\$ 2,500
2' x 6' Concrete Island	\$ 1,500	\$ -	\$ -	\$ 1,500
2 ea Bollards	\$ 1,700	\$ -	\$ -	\$ 1,700
Irrigation Repairs/Landscaping Allow	\$ -	\$ -	\$ 30,993	\$ 30,993
Permits/Insurance/Licenses	\$ 4,765	\$ 3,870	\$ 5,019	\$ 13,472
GC Overhead	\$ 8,686	\$ 7,055	\$ 9,149	\$ 24,559
Contingency	\$ 5,472	\$ 4,444	\$ 5,764	\$ 19,648
GC Fee	\$ 7,515	\$ 6,104	\$ 7,916	\$ 19,648
<b>Subtotal</b>	<b>\$ 195,393</b>	<b>\$ 158,697</b>	<b>\$ 205,809</b>	<b>\$ 581,144</b>
<b>ENGINEERING/TESTING</b>				
	\$ 4,000	\$ 27,000	\$ 15,000	\$ 46,000
<b>SUBTOTAL ALL DIRECT COSTS</b>	<b>\$ 199,393</b>	<b>\$ 185,697</b>	<b>\$ 220,809</b>	<b>\$ 627,144</b>
Developer Contingency	\$ 5,982	\$ 18,570	\$ 22,081	\$ 46,632
Developer/CM Fee	\$ 8,215	\$ 8,171	\$ 9,716	\$ 26,101
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$ 213,590</b>	<b>\$ 212,438</b>	<b>\$ 252,605</b>	<b>\$ 699,878</b>

b.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 220 Nassau Street

TMS: 459-05-01-067

PROPERTY OWNER: Charleston County School District

ACTION REQUEST: Authorize the Mayor to execute the Purchase and Sale Agreement for the City to acquire the Archer School site from Charleston County School District for future development to include affordable housing.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☐

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Frances Cantwell</u>	<input type="checkbox"/>
Chief Financial Officer	_____	<input type="checkbox"/>
Director Real Estate Management	_____	<input checked="" type="checkbox"/>
_____	_____	<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 220 Nassau Street

TMS: 459-05-01-067

PROPERTY OWNER: Charleston County School District

ACTION REQUEST: Authorize the Mayor to execute the Purchase and Sale Agreement for the City to acquire the Archer School site from Charleston County School District for future development to include affordable housing.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☐

### **ACTION:** What action is being taken on the Property mentioned?

☒ **ACQUISITION** Seller (Property Owner) Charleston County School District Purchaser City of Charleston

☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

☐ **FORECLOSURE**  
Terms: \_\_\_\_\_

☒ **PURCHASE**  
Terms: For future development to include affordable housing

☐ **CONDEMNATION**  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_

☐ **SALE** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_

☐ **EASEMENT** Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

☐ **PERMANENT** \_\_\_\_\_

## COMMERCIAL REAL ESTATE FORM

Terms: \_\_\_\_\_

☐

TEMPORARY

Terms: \_\_\_\_\_

☐

LEASE

Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

☐

INITIAL

Terms: \_\_\_\_\_

☐

RENEWAL

Terms: \_\_\_\_\_

☐

AMENDMENT

Terms: \_\_\_\_\_

☐

Improvement of Property

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

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**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: \_\_\_\_\_

Signature: \_\_\_\_\_

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

---

**NEED:** Identify any critical time constraint(s).

## **PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (this “Agreement”) is made and entered into as of the Effective Date (as defined herein) by and between the **CHARLESTON COUNTY SCHOOL DISTRICT**, a political subdivision of the State of South Carolina, as the successor to the City Board of Public School Commissioners for the City of Charleston (the “Seller”), and the **CITY OF CHARLESTON, SOUTH CAROLINA**, a South Carolina municipal corporation (the “City” or the “Purchaser”).

### **WITNESSETH**

1. **Sale of the Property**. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, all that certain real property located in the City of Charleston, Charleston County, South Carolina, and legally described on **Exhibit A**, attached hereto and incorporated herein by reference, together with all improvements and buildings thereon, and all rights, privileges and appurtenances pertaining thereto, including but not limited to water rights, claims, permits, and Seller’s ownership and rights, if any, to land lying in the bed of any street or highway, open or abandoned, adjoining the property to the centerline thereof (the “Property.”).

2. **Purchase Price**. The purchase price for the Property shall be Three Million Two Hundred Fifty Thousand and No/100 Dollars (\$3,250,000.00) (the “Purchase Price”). Subject to the adjustments and prorations to the Purchase Price set forth in this Agreement, Purchaser shall pay the Purchase Price to Seller in the following manner at Closing (as hereinafter defined):

A. Seller currently owes to Purchaser the amount of Two Million Two Hundred Seventy-Four Thousand One Hundred and No/100 Dollars (\$2,274,100.00) (the “Seller’s Debt”) under that certain Agreement for Exchange of Real Property dated June 21, 2011, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**. The Seller’s Debt shall be deducted from the proceeds of the conveyance of the Property to Purchaser and retained by the Purchaser for use in the renovation of Stoney Field as set forth in Section 8.A of this Agreement (the “Stoney Field Renovation”).

B. Purchaser shall set aside the balance of the Purchase Price for use in the Stoney Field Renovation.

3. **Earnest Money Deposit**. Within ten (10) business days after the Effective Date, Purchaser shall deposit Ten Thousand and No/100 Dollars (\$10,000.00) as earnest money (the “Earnest Money”) to Haynsworth Sinkler Boyd, P.A. (the “Escrow Agent”). Purchaser and Seller hereby authorize Haynsworth Sinkler Boyd, P.A. to act as the escrow agent and as Purchaser’s closing attorneys and to hold and disburse the Earnest Money according to the terms of this Agreement. Unless Seller is entitled to the Earnest Money under another provision of this Agreement, the Earnest Money shall be refunded to Purchaser upon the termination this Agreement for any reason. At Closing, the Earnest Money shall be credited to Purchaser as part of the Purchase Price.

4. **Contingencies.** Purchaser's obligation to close on the conveyance of the Property shall be contingent upon all of the following conditions:

- A. **Title.** Purchaser's satisfactory receipt, review, and approval of a title commitment (the "Title Commitment") with copies of all documents referred to as exceptions or encumbrances to the title commitment.
- B. **Survey.** Purchaser's satisfactory receipt, review, and approval of a current survey (the "Survey") of the Property, including without limitation any wetlands located on the Property.
- C. **Inspection.** Purchaser's satisfactory receipt, review, and approval of any and all physical and other inspections or investigations of the Property, including but not limited to environmental site assessments, soil tests, surveys, and environmental audits.
- D. **Grant.** Purchaser's receipt of a Grant ("Grant") from the Charleston Citywide Local Development Corporation (the "LDC") arising from the repayment of the Urban Development Action Grant ("UDAG") loan for Charleston Center that recognizes this acquisition and development as an eligible activity under the Grant.

5. **Due Diligence Investigations.**

- A. **Inspection Period.** Purchaser shall have until ninety (90) days after the Effective Date (the "Inspection Period") to conduct any and all physical and other inspections or investigations of the Property, including but not limited to environmental site assessments, soil tests, surveys, environmental audits, and other investigations, and to undertake such other activities as Purchaser deems necessary in connection with its evaluation and planning for the development of the Property.
- B. **Right of Access.** Seller shall cooperate with Purchaser in facilitating Purchaser's inspections and due diligence with respect to the Property, and Seller shall permit Purchaser and Purchaser's agents access to the Property at reasonable times during the Inspection Period.
- C. **Tort Claims Act.** With respect to Purchaser's access to the Property, Purchaser acknowledges responsibility for the torts of Purchaser and Purchaser's employees in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained in the South Carolina Tort Claims Act (the "Act"), codified at sections 15-78-10 to -220 of the South Carolina Code, as the Act may be amended from time to time.



- D. Insurance. As to any contractor hired by the Purchaser to inspect or perform tests on the Property, Purchaser shall require, prior to such contractor's entry on the Property, that the contractor keep in full force during the full term of such entry a policy of commercial general liability insurance issued by an insurance company licensed to do business in the State of South Carolina providing coverage for liability arising out of or in connection with entry upon the Property. The limits of liability coverage shall be no less than \$1,000,000.00 for each occurrence, and each contractor shall cause the Seller to be named as an additional insured.
- E. Return of Property Condition. Should Purchaser terminate this Agreement for any reason, aside from default of Seller, Purchaser shall return the Property to Seller in the same or better condition as existed prior to its entry onto the Property.
- F. Survival. Purchaser's obligations under Section 5.C and 5.D of this Agreement shall survive Closing and termination of this Agreement for any reason.

6. **Closing**.

- A. Closing Date. Subject to the conditions and contingencies in this Agreement, the closing of this transaction (the "Closing") shall occur at the offices of Purchaser's closing attorneys in Charleston, South Carolina, at 2:00PM on the later of the following dates (the "Closing Date"): (a) The date which is thirty (30) days after the last day of the Inspection Period; or (b) the date which is five (5) business days after the Purchaser's receipt of the Grant as set forth in Section 4.D of this Agreement. TIME IS OF THE ESSENCE.
- B. Closing in Escrow. Notwithstanding the foregoing, the Closing shall occur in escrow with the Escrow Agent. On or before the Closing Date, the parties shall deliver to the Escrow Agent any and all closing documents that the parties are respectively obligated to deliver under this Agreement. The parties agree to provide escrow instructions to the Escrow Agent consistent with the requirements of this Agreement to facilitate the Closing.
- C. Possession. Seller shall deliver possession of the Property to Purchaser at Closing.

7. **Closing Documents**. At least two business days before Closing, Seller shall execute and deliver to the Escrow Agent, in trust, the following items, in form and substance reasonably acceptable to Purchaser:

- A. Deed: A limited warranty deed, conveying valid, insurable (at standard rates), marketable, recordable and indefeasible fee simple title to the Property, subject only to (1) ad valorem real property taxes for the fiscal year in which the Closing occurs (to be prorated as of the Closing date); and (2) any other matters of record in the RMC Office for Charleston County, South Carolina, as of the Effective Date to which Purchaser has not objected prior to the expiration of the Inspection

Period (collectively the “Permitted Exceptions”); provided, however, (a) Purchaser shall not be obligated to object to mortgage or other financing liens, tax liens or money judgments, and the same shall be paid in full by Seller at or prior to Closing and shall cause the Property to be conveyed free and clear thereof; and (b) Purchaser shall not be required to object to any conditions listed in the Title Commitment which Purchaser’s title insurance company requires to be satisfied in order for the title insurance company to issue a final policy of owner’s title insurance for the Property to Purchaser, and the same shall be satisfied by Seller at or prior to Closing.

- B. Owner’s Affidavit. An owner’s affidavit in form reasonably acceptable to Purchaser’s title insurance company affirming that there are no outstanding possessory rights, liens or rights to claim rights or liens against the Property.
- C. Certificate of Tax Compliance. A current certificate of tax compliance from the South Carolina Department of Revenue as to the Seller, or affidavit in lieu thereof suitable to the Purchaser.
- D. Satisfactions/Releases. Recorded documents evidencing the satisfaction or release of any liens or mortgages on the Property.
- E. Foreign Person Affidavit. An affidavit of Seller certifying that Seller is not a “foreign person,” as defined in the Federal Foreign Investment in Real Property Tax Act of 1980, and the 1984 Tax Reform Act, as amended.
- F. Withholding Tax. An affidavit with respect to the withholding tax, as required by the State of South Carolina.
- G. Mortgage Payoff. Any information necessary for Purchaser’s closing attorneys to obtain a payoff letter from any mortgagee or lienholder of record. Seller understands and agrees that the proceeds of Closing will not be applied to terminate any mortgage of record prior to any disbursement being made to Seller, it being understood by the parties that Seller shall pay to satisfy any such mortgage or lien with funds other than proceeds of the Closing.
- H. Closing Statement. A closing statement setting forth the allocation of closing costs, purchase proceeds, etc.
- I. Evidence of Authority. If Seller is a legal entity, such consents and authorizations as Purchaser’s closing attorneys may reasonably deem necessary to evidence authorization of Seller for the sale of the Property, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Seller in connection with Closing.
- J. Other Documents. Such other documents or instruments as may be reasonably required by Purchaser, the Escrow Agent or the Purchaser’s title insurance

company, required by other provisions of this Agreement, or reasonably necessary to effectuate the Closing, so long as such matters do not require any material expenditure of funds by Seller.

8. **Other Agreements.**

- A. **Stoney Field Contribution Agreement.** Following Closing, Purchaser shall diligently pursue the development of plans and specifications for the renovation of Purchaser's real property known as Stoney Field (the "**Stoney Field Renovations**"). The plans and specifications are anticipated to include, at a minimum, the following improvements: surcharging and resurfacing of the playfield. The parties agree that the Purchase Price of the Property shall be utilized toward the Stoney Field Renovations. Further, the Seller shall contribute an additional One Million and no/100 Dollars (\$1,000,000.00) toward the Stoney Field Renovations from its capital program budget or other funding sources available to Seller as deemed appropriate by their Board of Trustees. A payment schedule for the parties' respective contributions to the Stoney Field Renovations shall be set forth in a separate agreement to be executed at Closing.
- B. **Affordable Housing Commitment.** Purchaser shall use a portion of the Property for affordable housing. As consideration for the Purchase Price, the City agrees to provide a priority set-aside of thirty percent (30%), or eight (8) units, whichever is greater, of the affordable units for occupancy by income-qualified employees of the Seller. The priority period for the units will be thirty (30) years from the Closing. The process and terms of the priority period are outlined **Exhibit C**, attached hereto and incorporated herein by reference.

9. **Closing Expenses.** Each party shall be responsible for the following expenses:

- A. **Seller's Expenses.** Seller shall be responsible for the cost of preparation of the limited warranty deed and related documents, the deed transfer fee, and, except as otherwise provided in this Agreement, any closing expenses customarily apportioned to a seller for similar transactions in Charleston, South Carolina.
- B. **Purchaser's Expenses.** Purchaser shall be responsible for all expenses incurred by Purchaser in investigating the Property, including the cost of title examination, all reports, tests or other products of Purchaser's inspections or investigations of the Property, and the Survey, which shall be the sole and exclusive property of Purchaser. In addition, except as otherwise provided in this Agreement, Purchaser shall be responsible for any closing expenses customarily apportioned to a purchaser for similar transactions in Charleston, South Carolina.
- C. **Attorneys' Fees.** The parties shall each be responsible for their respective attorneys' fees.

10. **Ad Valorem Taxes.** Ad valorem taxes (“Taxes”) assessed against the Property for the year in which Closing occurs shall be prorated on a calendar year basis as of the day of Closing and shall be based on the actual Taxes for the current calendar year. City shall apply for tax exempt status for the Property and, if obtained for the tax year 2017, any pro rata taxes paid by Seller at Closing shall be refunded to Seller.

11. **Seller’s Representations and Warranties.** Seller hereby makes the following representations and warranties to Purchaser, each of which is made as of the Effective Date and will be deemed to have been made again as of the date of Closing:

- A. Seller possesses all requisite right, authority and power to execute and perform this Agreement in accordance with its terms.
- B. Seller has good and marketable title in fee simple to the Property, which will be conveyed to Purchaser at Closing free and clear of any and all liens, encumbrances, restrictions or easements except for the Permitted Exceptions.
- C. There are no actions, suits or proceedings pending or threatened against Seller or the Property affecting any portion of the Property, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, to the best of Seller’s knowledge.
- D. There are not presently pending any condemnation actions or special assessments of any nature with respect to the Property or any part thereof, and Seller has not received any notices of any condemnation actions or special assessments being contemplated, nor does Seller have any knowledge of any being contemplated.
- E. Seller has not received any notice of any violation of any ordinance, regulation, law, or statute of any governmental entity or agency pertaining to the Property or any portion thereof with which Seller has failed to comply.
- F. Seller shall cooperate with Purchaser as may be necessary in the pursuit of title examination, soil and environmental testing, property inspections and the like, to include without limitation, providing Purchaser with copies of Seller’s deed to the Property, copies of Seller’s title insurance policy for the Property, if any; copies of any title search or survey Seller has had performed with respect to the Property, including copies of any documents referred to therein; copies of recorded or unrecorded instruments in which Seller has conveyed a right, title, or interest in the Property; and copies of previous reports, inspections, and the like relating to soil and environmental testing or other inspections of the Property. Seller shall also cooperate with Purchaser to allow Purchaser access to the Property to perform surveys, inspections, or investigations required or permitted in this Agreement.
- G. From the execution of this Agreement until the consummation of the purchase, Seller shall use commercially reasonable efforts to conduct the maintenance and

operations of the buildings and improvements on the Property in the ordinary course and consistent with the manner in which Seller maintains all of Seller's other unused school properties within the City of Charleston.

- H. The Charleston County School District is the successor of the City Board of Public School Commissioners for the City of Charleston, with full authority of such City Board of Public School Commissioners for the City of Charleston to convey the Property and enter into this Agreement.

12. **Condemnation.** If any taking pursuant to the power of eminent domain is threatened or occurs as to all or any material portion of the Property before the Closing, or a sale occurs in lieu thereof, Seller shall immediately notify Purchaser, and Seller may elect to terminate this Agreement by delivery of written notice of termination to Purchaser within thirty (30) days after written notice from Seller of the condemnation or threat thereof. If the Seller does not terminate this Agreement and wishes to proceed to Closing, subject to its continued right of termination, Purchaser shall have fifteen (15) days to notify Seller in writing that Purchaser intends to terminate this Agreement. If Purchaser does not terminate this Agreement and wishes to proceed to Closing, all proceeds, awards and other payments arising from any such taking or sale shall be assigned to and paid to Purchaser, without any adjustment of the Purchase Price. If Seller or Purchaser elect to terminate this Agreement as set forth herein, the parties hereto shall have no further obligations or liabilities under this Agreement, except as specifically provided herein to the contrary, and the Earnest Money shall be returned to the Purchaser.

13. **Risk of Loss.** Prior to Closing, if any part of the Property is damaged or destroyed by fire or other casualty loss, Seller shall not be obligated to restore the Property to its previous condition. In the event of such casualty loss, Purchaser may elect to (a) terminate this Agreement, in which case the Earnest Money shall be refunded to Purchaser; or (b) proceed to Closing, in which case any insurance proceeds received or due to Seller arising from or relating to the damage or destruction of the Property or any part of the Property shall be paid or assigned to Purchaser at Closing.

14. **Real Estate Commission.** The parties represent and warrant to each other that neither party has dealt with a broker, agent, or other individual nor entity entitled to a commission in connection with this transaction.

15. **Assignment.** This Agreement may not be assigned by Purchaser to any other party without the written consent of Seller, which consent may be withheld for any reason, except in the case of an assignment to an entity of which Purchaser has a controlling interest, in which case such consent shall not be unreasonably withheld. Seller may not assign any of its rights or obligations under this Agreement without the consent of Purchaser, which consent may be withheld for any reason.

16. **Default.**

- A. **By Purchaser.** If Purchaser defaults in its obligations under this Agreement for any reason except for a default by Seller, Seller shall immediately notify

Purchaser in writing and Purchaser shall have seven (7) days to cure said default (the “Purchaser Default Cure Period”), except that if the Purchaser Default Cure Period extends past the Closing Date, Purchaser’s right to cure shall end on the Closing Date and Purchaser shall be in default under this Agreement. If Purchaser fails to cure, Seller shall be entitled, as Seller’s exclusive remedy against Purchaser for Purchaser’s default, to either retain the deposit as liquidated damages and not as a penalty, or pursue any damages or remedies permitted by law or equity (including, without limitation, the right of specific performance), including Seller’s reasonable attorneys’ fees resulting from Purchaser’s default.

- B. By Seller. If Seller defaults in its obligations under this Agreement for any reason except for a default by Purchaser, Purchaser shall immediately notify Seller in writing and Seller shall have seven (7) days to cure said default (the “Seller Default Cure Period”), except that if the Seller Default Cure Period extends past the Closing Date, Seller’s right to cure shall end on the Closing Date and Seller shall be in default under this Agreement. If Seller fails to cure, Purchaser shall be entitled, as Purchaser’s remedy against Seller for Seller’s default, to pursue any damages or remedies permitted by law or equity (including, without limitation, the right to specific performance), including Purchaser’s reasonable attorneys’ fees resulting from Seller’s default.

17. **Time of the Essence**. The parties agree that time shall be of the essence in the performance of all of the terms and conditions of this Agreement. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act must be performed, or by which Closing must be held, expires on a Saturday, Sunday or a legal holiday, then such time period shall be automatically extended to and through the next day which is not a Saturday, Sunday or a legal holiday.

18. **Counterparts and Electronic Transmission**. This Agreement may be executed by all parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Facsimile or e-mail copies of this Agreement containing signatures of the parties shall be deemed to be originals and shall be binding.

19. **Captions**. Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

20. **Entire Agreement; Legally Binding**. The parties acknowledge that this Agreement contains the entire agreement between the parties with respect to the Property, and this Agreement supersedes any prior oral or written understanding with respect to the Property, and is legally binding on the parties. No modification of this Agreement and no waiver of any of its terms or conditions shall be effective unless made in writing, duly executed by both parties, and, as to Purchaser, adopted by resolution or, if required by law, ordinance, of the City Council.

21. **Successors and Assigns**. This Agreement shall be binding on the parties and their

respective heirs, successors and permitted assigns.

22. **Notices**. All notices or elections required or permitted to be given, delivered, or served by any party shall be deemed given, delivered, or served in accordance with the provisions of this Agreement (a) when delivered to the intended party personally; (b) at 5:00 p.m. on the business day after the date delivered to a nationally recognized delivery service including, without limitation, Federal Express, United Parcel Service, Airborne Express, postage prepaid and sent for next day delivery; or (c) at 5:00 p.m. on the third business day after the date deposited in the registered or certified United States mail, return receipt requested, postage prepaid, and addressed as follows:

**If to Seller:** Charleston County School District  
Attention: Operational Planning  
3999 Bridge View Drive  
North Charleston, SC 29405

E-mail: sean\_hughes@charleston.k12.sc.us

With a copy to:

Lynn L. Crooks, Esquire  
Attention: Lynn Lawandales Crooks, LLC  
3 Lockwood Drive, Suite 204  
Charleston, South Carolina 29401

E-mail: lcrooks@crookslaw.net

**If to Purchaser:** City of Charleston  
Attention: Real Estate Management Division  
Post Office Box 304  
Charleston, South Carolina 29402

E-mail: carduccic@charleston-sc.gov

With a copy to:

City of Charleston Legal Department  
Attention: Frances I. Cantwell, Esq.  
50 Broad Street  
Charleston, South Carolina 29401-0304

E-mail: cantwellf@charleston-sc.gov

Provided, however, if a party uses subsection (c) to effect notice on the other party, the party sending such notice must also immediately email a copy of the notice or election to the other

party using the email addresses provided.

23. **Governing Law.** This Agreement will be construed, and the rights of Seller and Purchaser under this Agreement will be determined in accordance with the laws of the State of South Carolina.

24. **Construction of Terms.** Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa.

25. **Execution of Documents.** Each party hereto covenants and agrees that it will at any time and from time to time do such acts and execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such documents in order to carry out fully and effectuate the transaction herein contemplated.

26. **Attorneys' Fees.** In the event that either party obtains a judgment against the other as a result of a suit or other proceeding instituted to enforce rights hereunder, such prevailing party shall also be entitled to recover all costs, expenses, and attorneys' fees incurred by such party in connection with such suit or proceeding.

27. **Interpretation.** No ambiguity in this Agreement shall be construed against the draftsman or principal draftsman of this Agreement.

28. **Miscellaneous.** If either party is a corporation, limited liability company, trust, partnership or other entity, it shall provide evidence that: (i) the persons executing this agreement are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing under the laws of the state of its organization and authorized to do business in the State of South Carolina, if its actions constitute "transaction of business."

29. **Effective Date.** This Agreement will become effective when all parties have signed it. The date of this Agreement (the "Effective Date") will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

[The remainder of this page has been intentionally left blank. The signature pages follow.]



[SELLER'S SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT]

IN WITNESS WHEREOF, the Charleston County School District, as successor to the City Board of Public School Commissioners for the City of Charleston, has caused these presents to be executed as of the date set forth below.

Signed, Sealed and Delivered in the  
Presence of:

CHARLESTON COUNTY SCHOOL  
DISTRICT

\_\_\_\_\_  
First Witness

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Second Witness

Date: \_\_\_\_\_

[The remainder of this page has been intentionally left blank.]

[PURCHASER'S SIGNATURE PAGE TO PURCHASER AND SALE AGREEMENT]

IN WITNESS WHEREOF, the City of Charleston, South Carolina, has caused these presents to be executed as of the date set forth below.

Signed, Sealed and Delivered in the  
Presence of:

CITY OF CHARLESTON,  
SOUTH CAROLINA

\_\_\_\_\_  
First Witness

By: \_\_\_\_\_  
Its: Mayor

\_\_\_\_\_  
Second Witness

Date: \_\_\_\_\_

[The remainder of this page has been intentionally left blank.]

## **EXHIBIT A**

### **[LEGAL DESCRIPTION OF THE PROPERTY]**

#### **Parcel A**

All that certain piece, parcel or lot of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, being all that portion of Block 2 shown on a plat dated March 18, 1924, and recorded in the RMC Office for Charleston County, South Carolina, in Plat Book C at Page 192, to the North of the centerline of said Block 2, butting and bounding to the North on Harris Street, to the East on Hanover Street, to the West on Nassau Street, and to the South on the other half or portion of the said Block 2, measuring and containing 277 feet on Harris Street, 149 feet and 6 inches on Nassau Street, 149 feet and 1 inch on Hanover Street, and 277 feet on the South or back line, being the said dimensions, more or less.

Being the same property conveyed to the City Board of Public School Commissioners for the City of Charleston by deed of Jean C. Howe and DeWitt W. King dated December 6, 1928, and recorded on December 7, 1928, in Book X33 at Page 295 in the RMC Office for Charleston County, South Carolina.

#### **Parcel B**

All that certain piece, parcel or lot of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, being the southern half of Block 2 as shown in a plat of lands of Cunningham and Brown made by Gedney M. Howe, Surveyor, May 7, 1920, and retraced February 1, 1924, showing the partition in kind of the said lands between the Heirs of George I. Cunningham and William K. Brown, which said plat is recorded in the RMC Office for Charleston County, South Carolina in Plat Book C at Page 192, butting and bounding West on Nassau Street, South on Sumter Street (formerly Jackson Street and currently Jackson Street), East on Hanover Street, and North on the northern portion of the said Block 2, measuring and containing the dimensions as will by reference to the aforesaid plat more fully appear, more or less.

Being the same property conveyed to the City Board of Public School Commissioners for the City of Charleston by deed of Jean C. Howe dated December 6, 1928, and recorded on December 7, 1928, in Book X33 at Page 294 in the RMC Office for Charleston County, South Carolina.

Parcel A and Parcel B together constituting one tax map parcel, designated as TMS 459-05-01-067.

c.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: March 5, 2018

FROM: Geona Shaw Johnson DEPT: HCD

ADDRESS: 1825 Austin Avenue, Charleston, SC 29405

TMS: 464-01-00-132

PROPERTY OWNER: City of Charleston

Authorizing the Mayor to execute on behalf of the city, a real estate note and mortgage modification agreement, clarifying that the original note given to the city by Latrice R. Evans, secured by a mortgage on property located at 1825 Austin Avenue, is subject to a balance reduction schedule and debt forgiveness provision.

ACTION REQUEST:

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**COORDINATION:** The request has been coordinated with:

*All supporting documentation must be included*

Department Head

Legal Department

Chief Financial Officer

Director Real Estate  
Management

Signature

Attachments

☒

☒

☐

☒

☐

**FUNDING:** Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

\*Commercial Property and Community & Housing Development have an additional form.

**COMMERCIAL REAL ESTATE FORM**

TO: Real Estate Committee DATE: March 5, 2018

FROM: Geona Shaw Johnson DEPT: HCD

ADDRESS: 1825 Austin Avenue, Charleston, SC 29405

TMS: 464-01-00-132

**PROPERTY OWNER:**

Authorizing the Mayor to execute on behalf of the city, a real estate note and mortgage modification agreement, clarifying that the original note given to the city by Latrice R. Evans, secured by a mortgage on property located at 1825 Austin Avenue, is subject to a balance reduction schedule and debt forgiveness provision.

**ACTION REQUEST:**

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**ACTION: What action is being taken on the Property mentioned?**

<input type="checkbox"/>	<b>ACQUISITION</b>	Seller (Property Owner) _____	Purchaser _____
<input type="checkbox"/>	<b>DONATION/TRANSFER</b>	Donated By: _____	
<input type="checkbox"/>	<b>FORECLOSURE</b>	Terms: _____	
<input type="checkbox"/>	<b>PURCHASE</b>	Terms: _____	
<input type="checkbox"/>	<b>CONDEMNATION</b>	Terms: _____	
<input type="checkbox"/>	<b>OTHER</b>	Terms: _____	
<input type="checkbox"/>	<b>SALE</b>	Seller (Property Owner) _____	Purchaser _____
<input type="checkbox"/>	<b>NON-PROFIT ORG, please name</b>	_____	
	Terms:	_____	
<input checked="" type="checkbox"/>	<b>OTHER</b>	Terms: <u>As amended in the Note/Mortgage Modification Attached</u>	
<input type="checkbox"/>	<b>EASEMENT</b>	Grantor (Property Owner) _____	Grantee _____

## COMMERCIAL REAL ESTATE FORM

☐

PERMANENT

Terms: \_\_\_\_\_

☐

TEMPORARY

Terms: \_\_\_\_\_

☐

LEASE

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

☐

INITIAL

Terms: \_\_\_\_\_

☐

RENEWAL

Terms: \_\_\_\_\_

☐

AMENDMENT

Terms: \_\_\_\_\_

☒

Improvement of Property

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

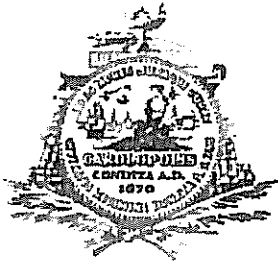
Results: \_\_\_\_\_

Signature: \_\_\_\_\_

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).



*City of Charleston*

WILLIAM B. REGAN LEGAL CENTER

50 Broad Street  
Charleston, SC 29401  
tel 843-724-3730  
fax 843-724-3706

CORPORATION COUNSEL  
Frances I. Cantwell  
cantwellf@charleston-sc.gov

DEPUTY CORPORATION COUNSEL  
Susan J. Herdina  
herdinas@charleston-sc.gov

ASSISTANT CORPORATION COUNSEL  
Janie E. Borden  
bordenj@charleston-sc.gov

Daniel S. ("Chip") McQueeney, Jr.  
mcqueeneyd@charleston-sc.gov

## MEMORANDUM

TO: Mayor John J. Tecklenburg and Members of Council

FROM: Daniel S. ("Chip") McQueeney, Jr. *ds*  
Assistant Corporation Counsel

RE: Note and Mortgage Modification Agreement for 1825 Austin Avenue with Latrice R. Evans

DATE: March 5, 2018

---

On May 9, 2017, City Council adopted Ordinance No. 2017-055, authorizing the Mayor to execute a purchase and sale agreement with Latrice R. Evans, in which the City agreed to convey property located at 1825 Austin Avenue to Ms. Evans for \$158,400.00. As part of the purchase price, the City received a note from Ms. Evans in the principal amount of \$40,520.00, secured by a second-priority mortgage on the property. The balance of the purchase price was paid to the City through a first-priority note and mortgage from a third-party lender. Closing of this transaction occurred on June 30, 2017.

Upon review of a similar transaction for the conveyance of property to Niandrea Taylor, which you will consider on March 13, 2018, it was determined that the note and mortgage from Ms. Evans need to be revised to include language that, absent a default by the owner, the note and mortgage would be forgiven without payment after thirty (30) years. This time period is tied to resale restrictions on the property, intended to ensure that the property remains affordable for 30 years. In addition, the note and mortgage from Ms. Evans need to be revised to incorporate a balance-reduction provision, which, for the purpose of resale, provides that the principal amount on the note and mortgage will be reduced each year the property remains affordable. These provisions were mistakenly omitted from the note and mortgage attached to Ordinance No. 2017-055 and given to the City by Ms. Evans.

Based on the foregoing, I have prepared an ordinance authorizing the Mayor to execute a Real Estate Note and Mortgage Modification Agreement with Ms. Evans. A copy of the proposed ordinance and draft agreement are attached hereto. Please note that the proposed agreement modifies the original note and mortgage to include the 30-year forgiveness provision and balance reduction schedule which were intended to be included in the original note and mortgage to Ms. Evans. You will be asked to give first reading of the proposed ordinance at your meeting on March 13, 2018.





Ratification  
Number \_\_\_\_\_

## AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A REAL ESTATE NOTE AND MORTGAGE MODIFICATION AGREEMENT, CLARIFYING THAT THE ORIGINAL NOTE GIVEN TO THE CITY BY LATRICE R. EVANS, SECURED BY A MORTGAGE ON PROPERTY LOCATED AT 1825 AUSTIN AVENUE, IS SUBJECT TO A BALANCE REDUCTION SCHEDULE AND DEBT FORGIVENESS PROVISION

BE IT ORDERED AND ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City a Real Estate Note and Mortgage Modification Agreement, a form copy of which is attached to this Ordinance and incorporated herein by reference as Exhibit A, clarifying that the original note and mortgage given to the City by Latrice R. Evans are subject to a balance reduction schedule and debt forgiveness provision. The final form shall be subject to approval by the City's Corporation Counsel.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord, 2018, in the \_\_\_\_\_ Year of the Independence of the United States of America.

By:

\_\_\_\_\_  
John J. Tecklenburg  
Mayor

Attest:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council



**Exhibit A to Ordinance**

[REAL ESTATE NOTE AND MORTGAGE MODIFICATION AGREEMENT]

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

REAL ESTATE NOTE AND MORTGAGE  
MODIFICATION AGREEMENT

THIS REAL ESTATE NOTE AND MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is made and executed this \_\_\_\_\_, 2018, by and between the City of Charleston, a South Carolina municipality (the "City" or the "Mortgagee") and Latrice R. Evans (the "Mortgagor").

WITNESSETH

WHEREAS, Mortgagor executed that certain Promissory Note (the "Note") dated June 30, 2017, whereby Mortgagor promised to pay to the order of the Mortgagee on June 30, 2047, if not sooner paid, the original principal sum of Forty-Seven Thousand Five Hundred Twenty and no/100 Dollars (\$47,520.00), with interest at the rate of six percent (6%) per annum, which principal and interest shall be payable upon demand by the Mortgagor, in the event of default;

WHEREAS, the Note is secured by that certain mortgage of real estate (the "Mortgage") from Mortgagor to Mortgagee dated June 30, 2017, and recorded on July 3, 2017, in Book 0649 at Page 583 in the Office of the Register of Deeds for Charleston County, South Carolina;

WHEREAS, Mortgagee is the holder of the said Note and Mortgage, and Mortgagor is the owner of the real property securing the Mortgage, more particularly described in Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, through mistake or inadvertence, the Note and Mortgage did not include a balance reduction or forgiveness provision, as described further in this Agreement, and the parties hereto desire that the Note and Mortgage be modified to include a balance reduction provision and a forgiveness provision, as set forth further in this Agreement;

NOW, THEREFORE, in consideration of One and no/100 Dollar (\$1.00), paid by Mortgagor, and the mutual covenants in this Agreement, the receipt of which is hereby acknowledged, Mortgagor and Mortgagee do hereby modify the terms of payment of the indebtedness evidenced by the Note and secured by the Mortgage as follows:

Section 1. The following paragraph is hereby added to the Note immediately prior to the paragraph beginning "Use of Property as Primary Residence":

So long as the Borrower complies with the terms and conditions of the Note and any mortgage securing same: (a) payments under this Note shall be deferred in accordance with the remaining terms of this Note; and (b) at the expiration of thirty (30) years from the date of this Note (the "*Expiration Date*" and such thirty (30) year period the "*Affordability Period*"), the principal balance along with any accrued interest shall be forgiven in full, provided, however, that any amounts hereafter advanced or expended by the Lender to protect its security as provided herein or in the Mortgage securing this Note, and the interest thereon, shall not be

forgiven or reduced and shall be due and payable from the time they are advanced or expended; and provided further, that in the event the Borrower defaults in any of the terms or conditions of this Note or the Mortgage securing same, then the Lender shall have the right to declare that the unpaid and remaining balance shall immediately become due and payable along with interest computed at the Note rate from the date of the event constituting breach or default, with interest to continue at such rate until such time as the entire indebtedness evidenced by this Note is fully paid.

Section 2. The following paragraph is hereby added to the Note immediately following the paragraph beginning "Use of Property as Primary Residence":

**Reduction of Unpaid Balance Upon Resale.** If at any time prior to the expiration of the Affordability Period, the Borrower determines to convey the Borrower's interest in the Property to a third party, the Borrower shall be entitled to a reduction of the outstanding principal balance (as of the date of such conveyance) in accordance with the schedule set forth below (the "**Balance Reduction**"), provided, however, that in order to obtain such Balance Reduction, the Borrower must first obtain written notification from the Lender, not to be unreasonably withheld, stating that, as of a date no later than ten (10) days prior to such conveyance, the Borrower is not in default with respect to the Note or Mortgage ("**Lender Notification**"). Upon receipt of the Lender Notification, and provided the conveyance occurs within ten (10) days after the date of the Lender Notification, the outstanding balance under the Note shall be reduced in accordance with the schedule attached hereto and incorporated herein by reference as Exhibit A.

Section 3. The schedule attached to this Agreement as Exhibit A is hereby incorporated into the Note by reference.

Section 4. Paragraph 16 of the Mortgage is hereby deleted and replaced with the following new paragraph 16:

16. Terms of Maturity; Acceleration. So long as the Borrower complies with the terms of this Mortgage and the Note, payments under this Mortgage shall be deferred in accordance with the terms of the Note. The term of this Mortgage shall be until the balance due on the Note is paid in full or thirty (30) years after the date of the Note and Mortgage, at which time the indebtedness shall be forgiven; provided, however, that any amounts hereafter advanced or expended by the Lender to protect its security as provided hereon, shall not be forgiven or reduced and shall be due and payable from the time they are advanced or expended; and provided further that, in the event the Borrower defaults in any of the terms, conditions, or covenants of this Mortgage or the Note, the principal and all accrued interest shall immediately become due and payable without further demand, and, in addition to all other available remedies, the Lender may foreclose this Mortgage by judicial proceeding and shall be entitled to collect in any such proceeding all expenses of

foreclosure, including but not limited to reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

Section 5. Except as expressly modified or altered by this Agreement, the Note and the Mortgage shall be and remain in full force and effect.

Section 6. This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES AND EXHIBITS TO FOLLOW]**

IN WITNESS THEREOF, Latrice R. Evans, the mortgagor, has executed this Real Estate Note and Mortgage Modification Agreement Real this \_\_\_\_ day of \_\_\_\_\_, 2018

SIGN, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
LATRICE R. EVANS

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON    )

ACKNOWLEDGEMENT

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Latrice R. Evans.

\_\_\_\_\_  
Notary Public for South Carolina

Printed Name of Notary: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[SEAL]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned City of Charleston, as mortgagee, has executed this Real Estate Note and Mortgage Modification Agreement this \_\_\_\_ day of \_\_\_\_\_, 2018.

WITNESSES:

THE CITY OF CHARLESTON,  
SOUTH CAROLINA

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: John J. Tecklenburg  
Its: Mayor

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF CHARLESTON    )

ACKNOWLEDGMENT

I, \_\_\_\_\_, Notary of the Public of the State of South Carolina, do hereby certify that the City of Charleston, South Carolina, by John J. Tecklenburg, its Mayor, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2018, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

[END OF DOCUMENT; EXHIBITS TO FOLLOW]

**EXHIBIT A TO REAL ESTATE NOTE AND  
MORTGAGE MODIFICATION AGREEMENT**

**[MORTGAGE BALANCE REDUCTION SCHEDULE]**

<b><u>Year of Conveyance</u></b>	<b><u>Balance Reduction</u></b>	<b><u>Balance</u></b>
<b>Beginning Balance</b>		<b>\$47,520.00</b>
1	\$1,584.00	\$45,936.00
2	\$1,584.00	\$44,352.00
3	\$1,584.00	\$42,768.00
4	\$1,584.00	\$41,184.00
5	\$1,584.00	\$39,600.00
6	\$1,584.00	\$38,016.00
7	\$1,584.00	\$36,432.00
8	\$1,584.00	\$34,848.00
9	\$1,584.00	\$33,264.00
10	\$1,584.00	\$31,680.00
11	\$1,584.00	\$30,096.00
12	\$1,584.00	\$28,512.00
13	\$1,584.00	\$26,928.00
14	\$1,584.00	\$25,344.00
15	\$1,584.00	\$23,760.00
16	\$1,584.00	\$22,176.00
17	\$1,584.00	\$20,592.00
18	\$1,584.00	\$19,008.00
19	\$1,584.00	\$17,424.00
20	\$1,584.00	\$15,840.00
21	\$1,584.00	\$14,256.00
22	\$1,584.00	\$12,672.00
23	\$1,584.00	\$11,088.00
24	\$1,584.00	\$9,504.00
25	\$1,584.00	\$7,920.00
26	\$1,584.00	\$6,336.00
27	\$1,584.00	\$4,752.00
28	\$1,584.00	\$3,168.00
29	\$1,584.00	\$1,584.00
30	\$1,584.00	\$0.00

The "Year of Conveyance" set forth above shall mean the calendar year beginning on the date of the Note and continuing until the first anniversary of such date, and each successive calendar year thereafter.

**EXHIBIT B TO REAL ESTATE NOTE AND  
MORTGAGE MODIFICATION AGREEMENT**

**[LEGAL DESCRIPTION]**

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being on the west side of Augusta Avenue in the subdivision known as Richland Village in the City of Charleston, Charleston County, State of South Carolina, being a portion of Lots Nos. 157 and 158 in Block O on a plat of the said Richland Village made by Gedney M. Howe, Surveyor, dated June 14, 1920, and recorded on June 17, 1920 in Plat Book C at Page 160 (the "Plat") in the R.M.C. Office for Charleston County, South Carolina, measuring and containing as follows:

Beginning at a point on the west line of Augusta Avenue thirty feet (30') north of the intersection of Oak Street and Augusta Avenue, and running in a northerly direction seventy feet (70'), thence in a westerly direction forty-five feet (45'), thence in a southerly direction seventy feet (70'), thence in an easterly direction to the point of beginning forty-five feet (45').

Butting and bounding to the east on Augusta Avenue, to the north on Lot No. 171 and a portion of Lot No. 172 on the said Plat, to the west on a portion of the western half of Lot No. 158 and to the south on the remaining portions of Lot Nos. 157 and 158 on said Plat.

This being the northern portion of the property conveyed by Sylvia Yaschik to Julia M. Pritchard by deed dated September 16, 1949, and recorded in the R.M.C. Office for Charleston County in Book Z-50, page 303.

By the said deed Sylvia Yaschik conveyed to Julia M. Pritchard all of Lot No. 157 and the eastern one-half of Lot No. 158 measuring and containing in the aggregate one hundred feet (100') on the eastern line of Augusta Avenue by forty-five feet (45') in depth. Since then Julia M. Pritchard has heretofore conveyed to Redeemed Church of Christ the south portion of the said property measuring and containing thirty feet (30') in front along August Avenue by forty-five feet (45') in depth by deed dated November 7, 1951, and recorded in the R.M.C. Office for Charleston County in Book A53 at Page 443, and the property hereby conveyed being all that remained to Julia M. Pritchard of the said property conveyed to her by Sylvia Yaschik.

The street referred to in the above description as Augusta Avenue has subsequently been renamed, and is now known as Disher Avenue, and the Street referred to in the above description as Oak Street has subsequently been renamed, and is presently known as Odessa Street.

This being the same property conveyed to Latrice R. Evans by deed of the City of Charleston dated June 29, 2017 and recorded on July 3, 2017, in Book 0649 at Page 580 in the Register of Deeds Office for Charleston County, South Carolina.

TMS No. 464-01-00-132



d.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: March 13, 2018  
FROM: Colleen Carducci DEPT: BFRC  
ADDRESS: 101 Broad Street  
TMS: 457-12-04-016  
PROPERTY OWNER: City of Charleston  
ACTION REQUEST: Request authorization for the Mayor to execute the Purchase and Sale Agreement for 101 Broad Street.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head		<input type="checkbox"/>
Legal Department	<u>Francis J. Cantwell</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management		<input checked="" type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_  
Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

\*Commercial Property and Community & Housing Development have an additional form.

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 101 Broad Street

TMS: 457-12-04-016

PROPERTY OWNER: City of Charleston

ACTION REQUEST: Request authorization for the Mayor to execute the Purchase and Sale Agreement for 101 Broad Street.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

### **ACTION: What action is being taken on the Property mentioned?**

☐ **ACQUISITION** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

☐ **FORECLOSURE**  
Terms: \_\_\_\_\_

☐ **PURCHASE**  
Terms: \_\_\_\_\_

☐ **CONDEMNATION**  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_

☒ **SALE** Seller (Property Owner) City of Charleston Purchaser EEMO, LLC

☐ **NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_

☒ **OTHER**  
Terms: Includes the requirement for the Purchaser to develop a building on the 101 Broad Street site within six years. Additionally, the City agrees to provide sufficient parking to meet zoning requirements for the renovation of 88 and 90 Broad Street.

☐ **EASEMENT** Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

## COMMERCIAL REAL ESTATE FORM

☐

PERMANENT

Terms: \_\_\_\_\_

☐

TEMPORARY

Terms: \_\_\_\_\_

☐

**LEASE**

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

☐

INITIAL

Terms: \_\_\_\_\_

☐

RENEWAL

Terms: \_\_\_\_\_

☐

AMENDMENT

Terms: \_\_\_\_\_

☐

**Improvement of Property**

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

---

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes

☐

No

☐

N/A

☒

Results: \_\_\_\_\_

Signature: \_\_\_\_\_

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

---

**NEED:** Identify any critical time constraint(s).





Ratification  
Number \_\_\_\_\_

## AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY SUCH DOCUMENTS, APPROVED AS TO FORM BY CORPORATION COUNSEL, AS IS NECESSARY TO EFFECTUATE THE TRANSFER OF CITY-OWNED PROPERTY LOCATED AT 101 BROAD STREET, TMS. NO. 457-12-04-016, TO EEMO, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE PURCHASE AND SALE AGREEMENT ATTACHED HERETO AS EXHIBIT A AND INCORPORATED HEREIN BY REFERENCE.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City such documents, approved as to form by Corporation Counsel, as is necessary to effectuate the transfer of City-owned property located at 101 Broad Street, TMS No. 457-12-04-016, to EEMO, LLC, a South Carolina Limited Liability Company, in accordance with the terms and conditions of the Purchase and Sale Agreement attached to this Ordinance as Exhibit A and incorporated herein by reference.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_ day of  
\_\_\_\_\_ in the Year of Our Lord, 2018,  
and in the \_\_\_\_nd Year of the Independence of  
the United States of America

\_\_\_\_\_  
John J. Tecklenburg  
Mayor, City of Charleston

ATTEST:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (hereinafter, the “*Contract*” and/or the “*Agreement*”) is made and entered into this \_\_\_\_ day of March, 2018 by and between the **CITY OF CHARLESTON**, a South Carolina municipality (hereinafter, the “*Seller*”) and **EEMO, LLC**, a South Carolina limited liability company (hereinafter, the “*Purchaser*”). For purposes of this Agreement, Seller and Purchaser may be referred to collectively as the “*Parties*” or individually as a “*Party*.”

### WITNESSETH:

**WHEREAS**, Seller is the owner, in fee simple, of that certain real property in the City of Charleston, County of Charleston, State of South Carolina, located at 101 Broad Street, identified by TMS No. 457-12-04-016 (hereinafter, the “*Property*”), which Property is described in the attached **Exhibit A** and is depicted in the attached **Exhibit B**;

**WHEREAS**, the Property is currently being used as a parking lot;

**WHEREAS**, Purchaser is currently in the process of purchasing and meticulously studying, researching, and restoring certain real property in the City of Charleston, County of Charleston, State of South Carolina, located across the street from the Property at 88 & 90 Broad Street, which real property is identified by TMS No. 457-12-02-005 and is owned by Courthouse Square Properties, LLC (hereinafter, the “*CSP Property*”);

**WHEREAS**, although the CSP Property, which is adjacent to the historic Charleston County Courthouse, is historically significant in its own right, it has been vacant for over fifteen (15) years, at least in part because it currently has no dedicated parking pursuant to existing City of Charleston zoning ordinances;

**WHEREAS**, through extensive research and planning, the Purchaser has determined that the only way it can proceed with its restoration plan for the CSP Property is to also purchase the Property in accordance with the terms and provisions of this Agreement;

**WHEREAS**, the Purchaser wishes to purchase the Property for a variety of reasons, including: (A) providing parking for the CSP Property; (B) constructing a commercial or residential building on the Property with features compatible with other structures in the general vicinity of the Property (hereinafter, the “*New Building*”); and (C) providing dedicated parking for the New Building (hereinafter, collectively, the “*Intended Uses*”);

**WHEREAS**, in utilizing the Property for the Intended Uses described herein, the Purchaser will utilize the existing curb cut for ingress and egress to and from Broad Street; and

**WHEREAS**, in accordance with the foregoing, and in accordance with the other terms and provisions of this Agreement, Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, and undertakings set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, the Property, subject to the following terms and conditions.

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings:

1.1 Appurtenant Rights means all easements, rights of ingress and egress, development rights and credits, timber, subsurface rights, mineral rights, water rights, and all other estates, rights, titles, interests, privileges, and appurtenances with respect to the Property described herein owned on the Effective Date by Seller or acquired by Seller prior to Closing.

1.2 Business Day means any day other than a Saturday, a Sunday, or day on which national banks in Charleston, South Carolina are required or permitted to close for customary banking business with the public.

1.3 Closing means generally the execution and delivery of those documents and funds necessary to effect the sale of the Property by Seller to Purchaser.

1.4 Closing Date means the date on which a Closing occurs, which shall be within thirty (30) days of the Effective Date of this Agreement; provided, however, that the Closing shall not take place prior to the closing on Purchaser's acquisition of title to the CSP Property and Purchaser's obligation to close on the Property shall be conditioned upon Purchasing having closed on the purchase of the CSP Property.

1.5 Conditions of Escrow means the Parties' agreement concerning the manner of holding and disbursing the Earnest Money Deposit, as set forth in **Exhibit C**.

1.6 Earnest Money Deposit means the initial Ten Thousand and NO/100 (\$10,000.00) Dollar deposit delivered by Purchaser to Escrow Agent within three (3) Business Days of the Effective Date of this Agreement, as set forth in detail herein (hereinafter, the "*Earnest Money Deposit*").

1.7 Effective Date means the latest date on which either the Purchaser or Seller executes this Agreement.

1.8 Environmental Law means any current legal requirement in effect at the Closing Date pertaining to: (A) the protection of health, safety, and the indoor or outdoor environment; (B) the conservation, management, protection or use of natural resources and wildlife; (C) the protection or use of source water and groundwater; (D) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Material; or (E) pollution (including any release to air, land, surface water, and groundwater).

1.9 Escrow Agent means The Woody Law Firm, LLC.

1.10 Governmental Authority means each federal, state and local governmental and quasi-governmental agency, bodies, entity, board and authority that have jurisdiction over the Property, the furnishing of utilities or other services to the Property, or improvement, development, occupancy, sale or use of the Property.

1.11 Hazardous Material means any hazardous or toxic substance as defined in or regulated by any Environmental Law in effect at the pertinent date or dates, including without limitation, petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials.

1.12 Permitted Exceptions means the specific exceptions set forth in the Title Insurance Commitment that: (A) Purchaser did not object to; (B) the Title Company has not agreed to insure over or remove from the Title Insurance Commitment as of the expiration of the Inspection Period; and (C) real estate taxes not yet due and payable.

1.13 Permitted Termination means the express right of a Party, as specifically set forth in this Agreement, to terminate this Agreement, in which event, if properly exercised, will result in the following: (A) the Earnest Money Deposit shall be immediately refunded to Purchaser or delivered to Seller, as specified in this Agreement; and (B) all rights, obligations and duties of both Parties shall terminate (except those which expressly survive termination of this Agreement).

1.14 Purchase Price means the consideration agreed to be paid by Purchaser to Seller for the purchase of the Property as set forth in Section 2.1.

1.15 Title Company means the national title insurer selected by Purchaser.

1.16 Title Defect means any exception in the Title Insurance Commitment or any matter disclosed by a survey, other than a Permitted Exception.

1.17 Title Insurance means an ALTA owners' policy of title insurance in the amount of the Purchase Price, insuring indefeasible fee simple title in Purchaser, subject only to the Permitted Exceptions and the printed exceptions and exclusions customarily included in such policies, issued by the Title Company, together with any endorsements reasonably requested by Purchaser.

1.18 Title Insurance Commitment shall mean the written commitment or agreement of the Title Company to issue the policy of Title Insurance, subject only to the Permitted Exceptions.

## 2. PURCHASE AND SALE OF PROPERTY.

2.1 Identification of the Property, Agreement to Purchase and Sale. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Property, together with the Appurtenant Rights, as defined herein, based on the terms set forth herein.

2.2 Purchase Price. The price for the Property shall be the sum of One Million Seven Hundred Thousand and NO/100 (\$1,700,000.00) Dollars (hereinafter, the "**Purchase Price**"). The Purchase Price shall be payable as follows:

2.2.1 A Five Hundred Thousand and NO/100 (\$500,000.00) Dollar initial payment (hereinafter, the "**Initial Payment**") shall be paid at Closing; provided, however, that the Earnest Money Deposit shall be credited to the Initial Payment at Closing; and

2.2.2 Five (5) consecutive annual payments in the amount of Two Hundred Forty Thousand (\$240,000.00) Dollars (hereinafter, the "**Additional Payments**") shall be paid by Purchaser to Seller on or before the anniversary date of the Closing Date for the first five (5) years following the Closing Date. The obligation to repay the Additional Payments shall be evidenced by a promissory note(hereinafter, collectively, the "**Loan**"), and the repayment of the Loan shall be secured by a first lien position real estate mortgage encumbering the Property to be recorded in the RMC Office for Charleston County. The documents concerning the Loan shall

clearly state that the Purchaser shall have the right to prepay the Loan at any time without penalty.

2.3 Earnest Money Deposit. The Ten Thousand and NO/100 (\$10,000.00) Dollar Earnest Money Deposit shall be deposited with Escrow Agent by Purchaser within three (3) Business Days after the Effective Date of this Agreement. The Earnest Money Deposit shall be held in trust by Escrow Agent, as specifically provided in the Conditions of Escrow attached hereto as Exhibit C, and shall be applied to the Purchase Price at Closing or otherwise disbursed in accordance with this Agreement. If Purchaser does not terminate this Agreement prior to the expiration of the Title Review Period, then the Earnest Money Deposit shall become non-refundable, subject to any express provisions of this Agreement entitling Purchaser to a refund thereof after the expiration of the Title Review Period.

2.4 Development Plan for the Property. The following provisions concerning the development of the Property shall be considered integral terms of this Agreement:

2.4.1 Construction of New Building. The Parties agree that the New Building will be constructed and shall front Broad Street, and the portion of the Property behind the New Building may be used for parking. Construction of the New Building may commence at any time after the Closing, subject to approvals from the relevant governmental authorities, including but not limited to the City of Charleston Board of Architectural Review (hereinafter, the “*Governmental Authorities*”); provided, however, that Purchaser shall not be obligated to commence construction of the New Building prior to the six (6) year anniversary of the Closing Date (hereinafter, the “*New Building Construction Commencement Deadline*”), so long as the design and plans for the New Building are approved by the Relevant Governmental Authorities by that date. Notwithstanding the foregoing, the Parties acknowledge and expressly agree that, if economic conditions are unfavorable for Purchaser to commence construction of the New Building by the New Building Commencement Deadline, Purchaser shall have the right to approach the City to request an extension of the New Building Construction Commencement Deadline, and such request shall not be unreasonably denied, conditioned, or delayed. In addition, the New Building Construction Commencement Deadline shall be automatically extended for so long as the City is unable to provide the Purchaser with all of the CSP Property Designated Parking Spaces.

2.4.2 Ingress/Egress. In utilizing the Property for the Intended Uses described herein, the Purchaser has agreed, and shall be permitted, to utilize the existing curb cut for ingress and egress to and from Broad Street.

2.4.3 Dedicated Parking for the CSP Property. At all times prior to the New Building Construction Commencement Deadline, Purchaser shall be permitted to utilize the Property as parking for the owner of the CSP Property, or the owner’s tenants, customers, clients, or other invitees. On or before the sixth (6<sup>th</sup>) anniversary of the Closing Date, the Seller shall provide Purchaser with the right to use parking spaces for the owner of the CSP Property, or the owner’s tenants, customers, clients, or other invitees, in order to satisfy current zoning regulations concerning parking in place as of the Effective Date of this Agreement (for example, under current zoning regulations: (A) if CSP Property was used only for office space, it would require 1 space per 500 square feet, so at 10,000 square feet, it would require 20 parking spaces; or (B) if the CSP Property was incorporated a mixed use, at 3,000 square feet of restaurant use, it would require 1 space per 150 square feet



and at 7,000 square feet of office use, it would require 1 space per 500 square feet, so it would require 34 parking spaces) (hereinafter, the “***CSP Property Designated Parking Spaces***”). The CSP Property Designated Parking Spaces shall be located in the City of Charleston parking garage at 93 Queen Street and shall be subject to the Seller’s customary parking agreement, which agreement shall survive the Closing on the purchase/sale of the Property. The Parties acknowledge and agree that the City’s parking garages operate in such a way that: (A) parking pass holders pay a monthly fee, which fee may vary from time to time; (B) although reserved parking spaces cannot be marked for the CSP Property Designated Parking Spaces, the holders of parking passes shall have the right to park in the designated garage even if the any signs indicate that the garage is full; and (C) the operating system for the garage will permit holders of parking passes with regard to the CSP Property Designated Parking Spaces to park in the relevant garage. Further, the portion of the Property not utilized for the New Building may be utilized as parking by the owner of the Property, or that owner’s tenants, occupants, customers, clients, or other invitees.

- 2.4.4 Parking Plan for the Property. At all times prior to the New Building Construction Commencement Deadline, Purchaser shall be permitted to utilize the Property as parking for the CSP Property, as there is currently no parking available to support the development of the CSP Property. Upon the completion of the New Building, the unimproved portion of the Property may be used for parking. In designing the parking plan and in operating the parking on the Property, Purchaser anticipates the possibility of utilizing vertical, mechanical parking, which the Seller supports, subject to approval by the relevant Governmental Authorities. It is also understood that the Purchaser may, after receiving the CSP Property Designated Parking Spaces, develop the site as a residential or commercial project, subject to the limitations set forth above.
- 2.4.5 Parking on the Property Prior to the Commencement of Construction on the Restoration of the Buildings Located on the CSP Property. Prior to the commencement of construction on the restoration of the building(s) located on the CSP Property, the Seller shall have the right to continue to use the Property for parking; provided, however, that: (A) prior to the commencement of construction on the building(s) located on the CSP Property, Purchaser shall have the right to use two (2) parking spaces located on the Property, which two parking spaces shall be selected by the Purchaser; and (B) once Purchaser commences construction on the building(s) located on the CSP Property, it shall have the exclusive right to use all parking spaces on the Property. Notwithstanding anything contained herein to the contrary, Seller shall have the right to utilize the Property for parking until May 31, 2018 and any and all leases currently in effect concerning the Property shall be terminated by that date; provided, however, that the Purchaser shall bear no responsibility for any loss, damage, injury, or claim related to injury to person or property associated with the Seller’s use of the Property during that period of time.
- 2.4.6 Upgrading of Fence Located on the Property. Purchaser shall be obligated to upgrade the fence currently existing along the property line of the Property facing Broad Street. Purchaser shall be required to repair and maintain that fence prior to the commencement of the construction of the New Building.

2.5 Tax Proration. Upon information and belief, the Property is not currently subject to taxation because of the status of the Seller as a municipality. As a result, there will be no proration of any *ad valorem* taxes and assessments for the Property reflected on the Closing statement. If the relevant taxing authorities assess the Property for *ad valorem* taxes and/or assessments during the year in which the Closing takes place, the Purchaser shall be responsible for paying the same, from the Closing Date through last day of the year for the year in which the Closing takes place.

2.6 Other Prorations. Matters of income and expense, if any, and other items customarily prorated in transactions of this kind, if any, shall be prorated as of midnight of the day of the Closing Date.

2.7 Closing Costs. At Closing, the Parties shall pay closing costs as follows:

2.7.1 Seller's Closing Costs. At or prior to Closing, Seller shall pay:

- A. The costs, if any, of curing Title Defects and recording any curative title documents, if and to the extent Seller has elected or is obligated to cure same in accordance with the provisions of this Agreement;
- B. The costs, if any, of satisfying any mortgages or other monetary liens made by Seller on the Property being sold;
- C. Seller's attorneys' fees relating to the sale of the Property; and
- D. Upon information and belief, because of the status of the Seller as a municipality, no deed stamps or transfer taxes based on the value of the Property shall be due and payable at Closing; provided, however, that, if deed stamps are required, they will be paid by the Seller per statute.

2.7.2 Purchaser's Closing Costs. At or prior to Closing, Purchaser shall pay:

- A. The costs of Purchaser's due diligence investigations;
- B. The cost of the title examination and title insurance premiums and endorsement fees;
- C. Purchaser's attorneys' fees; and
- D. The cost of recording the deed.

### 3. INSPECTIONS OF THE PROPERTY AND TITLE REVIEW.

3.1 Inspections of the Property. During the time in between the Effective Date of this Agreement and the Closing Date, Purchaser shall have the right to physically inspect the Property and conduct its due diligence related thereto, including without limitation, environmental investigations, geotechnical and soil tests, engineering tests, flood studies, ecological studies, other physical inspections of the Property, and analyses regarding utilities and zoning, all in accordance with the terms of this Section. Seller shall permit Purchaser to access the Property at all reasonable times to conduct such inspections

3.2 Purchaser's Obligations in Conducting Due Diligence. If Purchaser exercises its rights to inspect the Property as set forth herein, Purchaser shall: (A) keep the Property free of any liens or third-party claims resulting therefrom; (B) indemnify Seller against any liability or expense for injuries to or death of

persons or damage to property arising from the entry onto the Property by Purchaser, its employees, agents, contractors, and subcontractors which is not the result of any act or omission of Seller or Seller's agents, employees, or contractors; (C) Purchaser's activities on the Property shall not unreasonably interfere with the City's normal operation of the Property nor any of the City's tenants; and (D) if the Closing does not occur for any reason (other than a default by Seller in performing its obligations hereunder), Purchaser shall restore Property as nearly as practicable to its condition immediately before Purchaser's action which caused any damage. Notwithstanding anything in this Agreement to the contrary: (A) Purchaser shall not perform any invasive testing, other than soils testing, or conduct such other investigation(s) at the Property the results of which may require Seller or Purchaser to submit any registration or filings to any Governmental Authority without first obtaining Seller's written consent, such consent not to be unreasonably conditioned, withheld, or delayed; (B) the indemnity set forth herein shall not extend to protect Seller from any preexisting liabilities for matters merely discovered by Purchaser (i.e., latent environmental contamination) or to the extent caused by Seller's acts or omissions.

3.3 Title Review Period. Purchaser, at Purchaser's sole cost and expense, shall have the right to obtain a Title Commitment concerning the Property from the Title Company. In addition, Purchaser shall have a right to obtain, at its sole expense, a new survey of the Property (hereinafter, the "**Survey**"). In the event any exceptions to title appear in the Title Commitment, or any matters appear on the Survey, that are unacceptable to Purchaser, Purchaser shall, not later than 5:00 p.m. EST on the fifteenth (15<sup>th</sup>) day following the Effective Date of this Agreement, notify Seller in writing of such objections (hereinafter, the "**Title Objections**"). In the event that Purchaser timely objects to any Title Exceptions within the time period set forth above, Seller shall have until the Closing Date (hereinafter, the "**Cure Period**") within which (at Seller's option and without obligation) to eliminate or modify any Title Objections to the reasonable satisfaction of Purchaser, or to respond in writing as to whether Seller will undertake to satisfy any Title Objections prior to Closing. In the event that Seller fails or refuses to eliminate or modify, or elects not to undertake to eliminate or modify, the Title Objections to the reasonable satisfaction of Purchaser within the time period set forth above, Purchaser shall have the right to: (A) terminate this Agreement and receive an immediate refund of the Earnest Money Deposit, whereupon this Agreement shall automatically terminate and the Parties shall have no further obligations to each other except as expressly provided in this Agreement to the contrary; or (B) waive the Title Objections and proceed to Closing without any adjustment to the Purchase Price, in which case all such Title Objections shall be deemed to be Permitted Exceptions. Seller shall only be obligated to satisfy and discharge at or prior to Closing any and all mortgages, liens, fines or penalties which can be satisfied by the payment of a liquidated sum.

3.4 City Council Approval Contingency. The Parties hereby acknowledge and agree that their obligations under this Agreement are subject to the approval of the City of Charleston City Council (hereinafter, the "**City Approval**"). Between the Effective Date of this Agreement and the Closing Date, the Seller shall endeavor to obtain City Approval (hereinafter, the "**City Approval Period**"). If the Seller is unable to obtain the City Approval, the Purchaser shall have the right to terminate this Agreement and receive an immediate refund of the Earnest Money Deposit, whereupon this Agreement shall automatically terminate and the Parties shall have no further obligations to each other except as expressly provided in this Agreement to the contrary.

3.5 Contingency for Purchase of the CSP Property. The Parties hereby acknowledge and agree that their obligations under this Agreement are subject to the Purchaser's successful closing on the purchase and acquisition of the CSP Property and Purchaser's commitment to restore the CSP Property as described above.

4. **REPRESENTATIONS AND WARRANTIES.**

4.1 **Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties to Purchaser as of the Effective Date of this Agreement, all of which shall also be deemed to have been made by Seller to Purchaser as of the Closing Date and which shall survive the Closing for a period of one year:

- 4.1.1 **Authority.** Seller is the sole owner of fee title to the Property. Seller has the full right and authority to enter into this Agreement and to consummate the sale of the Property contemplated herein, subject to the City Approval. This Agreement has been, and the documents to be executed by Seller pursuant to this Agreement will be, authorized and properly executed and does and will constitute the valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, subject to the City Approval.
- 4.1.2 **Conflicts and Pending Actions or Proceedings.** There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against or relating to the Property or which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement including, but not limited to, any condemnation proceeding affecting the Property.
- 4.1.3 **Environmental.** Seller has no knowledge of any violation of Environmental Laws related to the Property or the presence or release of Hazardous Materials on or from the Property. Seller has not manufactured, introduced, released or discharged any Hazardous Materials from or onto the Property, and Seller, to the best of its knowledge, has not used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials.
- 4.1.4 **Service Agreements.** There are no service agreements or contracts, including management agreements, entered into by Seller affecting the Property that cannot be terminated without penalty or other financial obligation upon ten (10) days' notice or less.
- 4.1.5 **Adverse Information.** Seller has received no notice of any change contemplated in any applicable laws, ordinances, or restrictions, or of any judicial or administrative action or of any action by adjacent landowners, which would adversely affect the Property.
- 4.1.6 **Compliance with Laws.** Seller has received no notice of any violation of any applicable laws, ordinances, regulations, statutes, rules, and restrictions pertaining to and affecting the Property.
- 4.1.7 **No Rights of Acquisition.** No other person, firm, corporation, or other entity has any right or option to acquire the Property, or any portion thereof, as a result of any act of Seller, and Seller has no duties or obligations to any third parties with respect to the Property, or any portion thereof.
- 4.1.8 **No Adverse Information.** To the best of Seller's knowledge, there are no other adverse facts relating to this Agreement or the physical condition of the Property that have not been specifically disclosed in writing by Seller to Purchaser that

would adversely affect Purchaser's Intended Uses. Further, Seller has no knowledge of any fact that would impair the value of the Property for Purchaser's intended of the Property.

4.1.9 FIRPTA. Seller is not a foreign person within the meaning of Section 7701(a) (5) of the Internal Revenue Code of 1986, as amended.

4.1.10 Access. The Property has reasonable access to and from public highways, streets and/or roads, and there are not any pending or threatened governmental proceedings or any other fact, which would limit or result in the termination of such access.

4.1.11 Utilities. Clean and potable water and sewer suitable for domestic use and electric and gas service are available to the Property.

4.2 Purchaser's Reliance. Seller understands that: (A) Purchaser is materially relying on the accuracy and genuineness of the representations and warranties set forth herein; (B) Purchaser would not enter into this Agreement but for Seller's willingness to make these representations and warranties.

4.3 Purchaser's Representations and Warranties. Purchaser hereby makes the following representations and warranties to Seller as of the Effective Date of this Agreement, all of which shall also be deemed to have been made by Purchaser to Seller as of the Closing Date and which shall survive the Closing for a period of one year:

4.3.1 Standing. If Purchaser assigns its interest in this Agreement to an entity owned in whole or in part by Purchaser, that entity will be duly organized, validly existing, and in good standing under the laws of the organization.

4.3.2 Authority. Purchaser's execution and delivery of this Agreement to Seller has been authorized by Purchaser in accordance with applicable law and that all other actions required to be taken to authorize execution of this Agreement and Purchaser's performance of all obligations undertaken by it under its terms have been duly and regularly taken.

4.3.3 No actions. There are no actions, suits or proceedings pending or to the knowledge of Purchaser threatened against or affecting Purchaser, which would impede or otherwise impair its ability to perform its obligations under this Agreement.

4.3.4 Conflicts and Pending Actions or Proceedings. There is no agreement to which Purchaser is a party or, to Purchaser's knowledge, binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which impairs Purchaser's ability to execute or perform its obligations under this Agreement.

4.3.5 Financial Ability. Purchaser is financially able to perform all of its obligations under this Agreement.

4.4 Seller's Reliance. Purchaser understands that: (A) Seller is materially relying on the accuracy and genuineness of the representations and warranties set forth herein; (B) Seller would not enter into this Agreement but for Purchaser's willingness to make these representations and warranties.

5. **POSSESSION, CASUALTY LOSS, AND EMINENT DOMAIN.**

5.1 **Possession.** Possession of the Property will be transferred to Purchaser at the conclusion of the Closing, free and clear of all tenants or other persons claiming any rights to use or occupy all or any portion of the Property, and free and clear of any and all liens and encumbrances, except for the Permitted Exceptions.

5.2 **Eminent Domain.** If, before Closing, any material portion of the Property is taken or threatened by eminent domain, or if there is a material obstruction of access or parking by virtue of a taking or threat of taking by eminent domain, Seller shall, within ten (10) days of such taking, notify Purchaser thereof and Purchaser shall have the option to: (A) terminate this Agreement upon notice to Seller given within ten (10) Business Days after such notice from Seller, in which case Purchaser shall receive a return of the Earnest Money Deposit; or (B) proceed with the purchase of the Property without reduction in the Purchase Price, in which event Seller shall assign to Purchaser without representation, warranty or recourse, all Seller's right, title and interest in all amounts due or collected by Seller as condemnation awards.

5.3 **Casualty Loss.** If, before Closing, any portion of the Property is damaged by a casualty of any nature, Seller shall, within ten (10) days of such damage, notify Purchaser thereof and Purchaser shall have the option to: (A) terminate this Agreement upon notice to Seller given within ten (10) Business Days after such notice from Seller, in which case Purchaser shall receive a return of the Earnest Money Deposit; or (B) proceed with the purchase of the Property with a reduction in the Purchase Price equal to the amount required to repair such damage.

6. **CLOSING.**

6.1 **Seller's Conditions to Closing.** The obligation of Seller to close hereunder is subject to satisfaction of the following conditions and requirements, in Seller's reasonable judgment, on or prior to the Closing Date, any or all of which may be waived by Seller:

- A. Payment of the Purchase Price through the means set forth herein;
- B. Purchaser's representations and warranties set forth herein shall be true and correct as of the relevant Closing Date;
- C. Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date, including delivery of the documents required in Section 6.4 below; and
- D. Seller shall have satisfied the City Approval.

6.2 **Purchaser's Conditions to Closing.** The obligation of Purchaser to close hereunder is subject to satisfaction of the following conditions and requirements, in Purchaser's reasonable judgment, on or prior to the Closing Date, any or all of which may be waived by Purchaser:

- A. The Title Company shall stand ready, willing, and able to issue a final commitment to issue the Title Insurance as required by this Agreement, subject only to the Permitted Exceptions;
- B. Seller's representations and warranties shall be true and correct as of the Closing Date; and

- C. Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the relevant Closing Date, including delivery of the documents required in Section 6.5 below.

6.3 Failure of a Closing Condition. If any of the foregoing conditions is not satisfied at or prior to Closing, then the party benefited by such closing condition may do one of the following: (A) terminate this Agreement and require the Escrow Agent to return to Purchaser the Earnest Money Deposit, whereupon this Agreement shall be automatically terminated and all parties released from all further obligations hereunder; or (B) waive the unsatisfied conditions and proceed with Closing.

6.4 Seller's Closing Documents. At the Closing, upon payment of the Purchase Price, Seller shall execute and deliver to Purchaser or Purchaser's designated closing agent:

- A. A limited warranty deed in a form reasonably acceptable to Purchaser, duly executed, witnessed, and acknowledged, so as to convey to Purchaser the fee simple title to the Property, subject only to the Permitted Exceptions; provided, however, that: (i) assuming the transaction contemplated herein will not be subject to deed stamps or transfer taxes, the Parties agree that the Purchase Price or consideration need not be included in the deed to be recorded in the public records; or (ii) if the transaction contemplated herein is subject to deed stamps or transfer taxes, the Seller shall pay for the same;
- B. An owner's affidavit and such further instruments of conveyance, transfer, and assignment and other documents as may reasonably be required by the Title Company in order to effectuate the provisions of this Agreement and the consummation of the transactions contemplated herein;
- C. Resolutions of Seller and its duly authorized officials, authorizing the transactions described herein;
- D. A Closing Statement;
- E. A duly executed affidavit stating that Seller, or the person(s) from whom Seller takes title, is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980, and a South Carolina residence affidavit;
- F. Such other documents as Purchaser or the Title Company may reasonably request to effect the transactions contemplated by this Agreement; and
- G. A certificate affirming that all of Seller's representations and warranties made in this Agreement remain true and correct as of the Closing Date.

6.5 Purchaser's Closing Documents. At the Closing, Purchaser shall pay the Purchase Price in accordance with Section 2 of this Agreement and shall execute and deliver to Seller or Seller's designated closing agent:

- A. A Closing Statement;

- B. Such other documents as Seller or the Title Company may reasonably request to effect the transactions contemplated by this Agreement; and
- C. A certificate affirming that all of Purchaser's representations and warranties made in this Agreement remain true and correct as of the Closing Date.

7. **BREACH; REMEDIES.**

7.1 **Breach by Seller.** In the event of a breach of Seller's covenants or warranties herein, and/or if Seller should fail to close at the time and in the manner specified in this Agreement, Purchaser may elect, as its sole remedies, to either: (A) terminate this Agreement and receive a refund of the Earnest Money Deposit; (B) pursue a suit for specific performance or other equitable remedies; or (C) if specific performance is not available, Purchaser may sue for damages; provided, however, that any such monetary damages recoverable from Seller may not exceed Ten Thousand and NO/100 (\$10,000.00) Dollars.

7.2 **Breach by Purchaser.** In the event of a breach of Purchaser's covenants or warranties herein, and/or if Purchaser should fail to close at the time and in the manner specified in this Agreement, Seller's sole remedy shall be to terminate this Agreement and retain the Earnest Money Deposit, as agreed upon liquidated damages and not as a penalty (it being agreed that actual damages in such event would be difficult to determine, and the Earnest Money Deposit is a reasonable estimate thereof), and upon payment in full to Seller of such Earnest Money Deposit, the Parties shall have no further rights, claims, liabilities, or obligations under this Agreement, except that Purchaser's obligations under any indemnity or repair obligation or other obligation that expressly survives termination shall survive such termination and Seller may also proceed thereunder.

7.3 **Notice of Breach; Opportunity to Cure.** Before either Party shall be entitled to declare the other in breach of this Agreement, it shall put the other Party on written notice of the nature of the claimed breach and the Party claimed to have breached this Agreement shall have five (5) days after receipt of such notice in which to cure the claimed breach.

8. **BROKERAGE.** Seller and Purchaser each hereby warrant and represent to the other that there are no agents, brokers, or other parties to whom any commissions, finder's fees, or other similar fees are due or arising in connection with the entering into of this Agreement, the sale and purchase of the Property, or the consummation of the transactions contemplated herein.

9. **NOTICES.** All notices and demands of any kind which either Party may be required or may desire to serve upon the other Party in connection with this Agreement shall be in writing, signed by the Party or its counsel identified herein, and shall be served (as an alternative to personal service) by registered or certified mail, overnight courier service, or email or facsimile transmission (followed promptly by personal service or mailing of a hard copy), at the addresses set forth in the attached **Exhibit D** or at such other address as has been substituted by notice given to the other Party in writing. Any such notice or demand so secured, shall constitute proper notice hereunder upon delivery to the United States Postal Service or to such overnight courier, or by confirmation of the email or facsimile transmission.

10. **LITIGATION.**

10.1 **Attorneys' Fees.** In the event of any dispute, litigation, or other proceeding between the Parties hereto to enforce any of the provisions of this Agreement or any right of either Party hereunder, the unsuccessful Party to such dispute, litigation or other proceeding shall pay to the successful Party all costs and expenses, including reasonable attorneys' fees, incurred at trial, on appeal, and in any arbitration,



administrative or other proceedings, all of which may be included in and as a part of the judgment rendered in such litigation.

10.2 Venue. Venue for any litigation arising out of this Agreement shall lie only in Charleston County, South Carolina.

10.3 Survival. The provisions of this Section 10 shall survive the Closing or an earlier termination of this Agreement.

## 11. MISCELLANEOUS PROVISIONS AND RULES OF CONSTRUCTION.

11.1 Headings. The titles and headings of the various sections hereof are intended solely for means of reference and are not intended for any purpose whatsoever to modify, explain or place any construction on any of the provisions of this Agreement.

11.2 Validity. If any of the provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.3 Governing Law. This Agreement shall be governed by the laws of the State of South Carolina.

11.4 Gender; Plural; Singular; Terms. A reference in this Agreement to any gender, masculine, feminine or neuter, shall be deemed a reference to the other, and the singular shall be deemed to include the plural and vice versa, unless the context otherwise requires. The terms "herein," "hereof," "hereunder," and other words of a similar nature mean and refer to this Agreement as a whole and not merely to the specified section or clause in which the respective word appears unless expressly so stated.

11.5 Counterparts, Further Instruments, etc. This Agreement may be executed in counterparts, and when so executed shall be deemed executed as one agreement. Seller and Purchaser shall execute any and all documents and perform any and all acts reasonably necessary to fully implement this Agreement.

11.6 Binding Effect. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and permitted assigns of the Parties. Purchaser may assign the Agreement to an Affiliate without Seller's prior consent.

11.7 Entire Agreement. This Agreement, together with the exhibits attached hereto, supersedes all prior agreements between the Parties as to the Property, if any, and constitutes the entire agreement between the Parties with respect to the subject matter hereof.

11.8 Force Majeure. The time for performance of an obligation, other than the payment of money, or the satisfaction of any contingency under this Agreement shall be extended for the period during which a Party is prevented from performing by the act or omission of the other party, acts of God, government, or other force or event beyond the reasonable control of such party.

11.9 Waiver. No right or remedy under this Agreement will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

11.10 Facsimile/Scanned Signatures. In order to expedite the transaction contemplated herein, telecopied, faxed, or scanned signatures may be used in place of original signatures on this Agreement. Seller and Purchaser intend to be bound by the signatures on the telecopied/faxed/scanned document, are aware that the other party will rely on the same, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

11.11 Construction. The Parties acknowledge that they and their counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

11.12 Exhibits. Each document referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit is incorporated herein by reference and made a part hereof.

11.13 Assignment. Purchaser shall have the absolute right, in its sole discretion, to assign all of its right, title, and interest in this Agreement to an entity wholly owned by the Purchaser and/or the principal(s) of the Purchaser.

11.14 No Recordation. Neither Party shall have the right to record this Agreement, or a memorandum or other instrument reflecting any or some of the terms of this Agreement, without the express written consent of the other Party.

11.15 Survival. All post-Closing obligations of the Parties set forth herein shall survive the Closing on the purchase/sale of the Property.

*Remainder of Page Intentionally Left Blank*  
*\*\*\* Signatures on Following Page \*\*\**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, on the dates set forth below.

**SELLER:**

**CITY OF CHARLESTON**, a South Carolina municipality

\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**PURCHASER:**

**EEMO, LLC**, a South Carolina limited liability company

\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

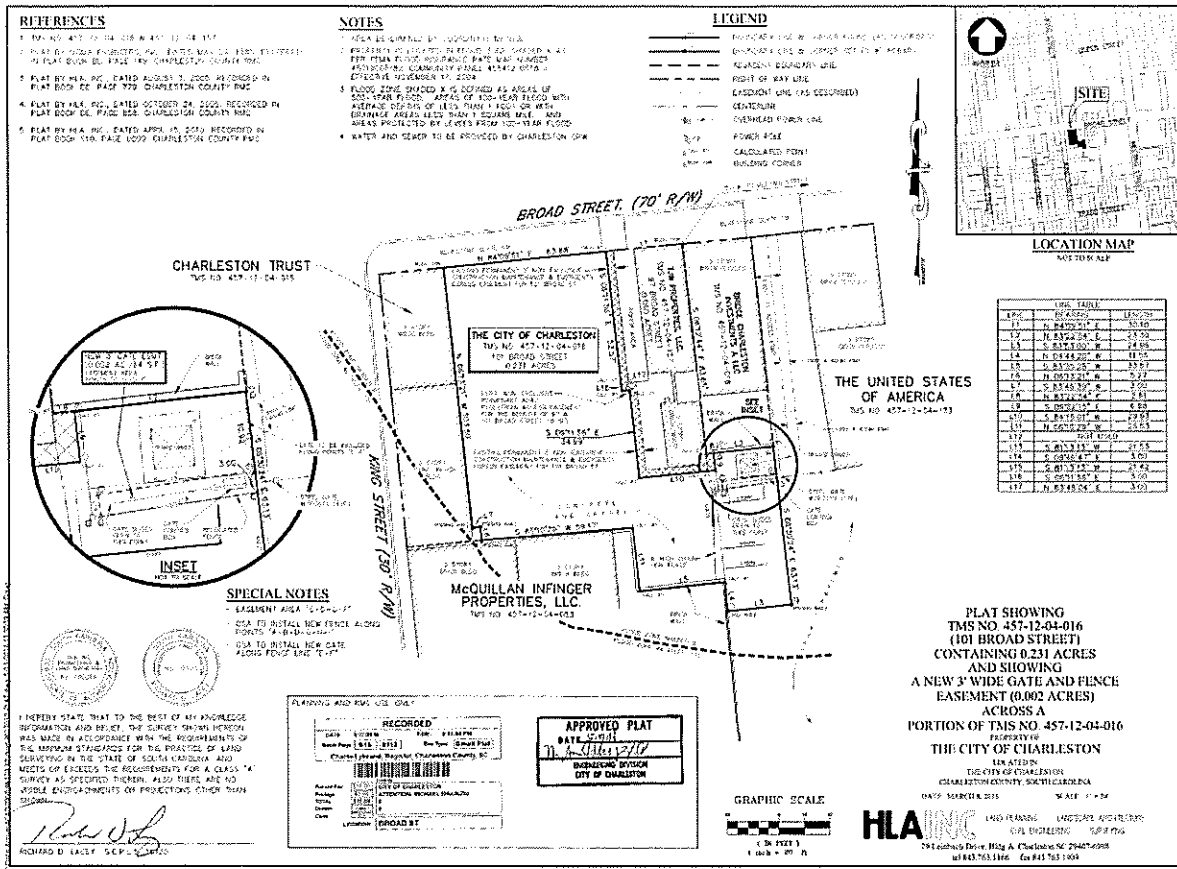
Date of Execution: \_\_\_\_\_

## **EXHIBIT A**

### Description of the Property

ALL that certain piece, parcel, or lot of land, together with the improvements thereon, if any, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, known and designated as "THE CITY OF CHARLESTON TMS NO. 457-12-04-016 101 BROAD STREET 0.231 ACRES," as shown on that certain plat prepared by Richard D. Lacey, SCPLS 16120 of HLA, Inc. entitled "PLAT SHOWING TMS NO. 457-12-04-016 (101 BROAD STREET) CONTAINING 0.231 ACRES AND SHOWING A NEW 3' WIDE GATE AND FENCE EASEMENT (0.002 ACRES) ACROSS A PORTION OF TMS NO. 457-12-04-016 PROPERTY OF THE CITY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA," which plat was dated March 6, 2016 and recorded May 17, 2016 in the RMC Office for Charleston County in Plat Book S16, at Page 0112. Said plat having such size, shape, buttings, boundings, courses, distances, and location as will by reference to said plat more fully appear.

### Depiction of the Property



## EXHIBIT C

### The Conditions of Escrow

**THESE CONDITIONS OF ESCROW** (hereinafter, the “*Agreement*”) is made and entered into as of the \_\_\_\_ day of March, 2018 (the “*Effective Date*”), by and among the **CITY OF CHARLESTON**, a South Carolina municipality (hereinafter, the “*Seller*”), **EEMO, LLC**, a South Carolina limited liability company (hereinafter, the “*Purchaser*”), and **THE WOODY LAW FIRM, LLC**, a South Carolina limited liability company (hereinafter, the “*Escrow Agent*”). For purposes of this Agreement, Seller, Purchaser, and Escrow Agent may be referred to collectively as the “*Parties*” or individually as a “*Party*.”

### W I T N E S S E T H :

**WHEREAS**, Seller is the owner, in fee simple, of that certain real property in the City of Charleston, County of Charleston, State of South Carolina, located at 101 Broad Street, identified by TMS No. 457-12-04-016 (hereinafter, the “*Property*”);

**WHEREAS**, Purchaser and Seller have executed that certain Purchase and Sale Agreement (hereinafter, the “*PSA*”) contemporaneously with the execution of this Agreement, whereby Seller agreed to sell Purchaser, and Purchaser agreed to purchase from Seller, the Property;

**WHEREAS**, in accordance with the PSA, Purchaser has agreed to deposit certain funds in escrow so that Purchaser can conduct its due diligence concerning the Property, with the anticipation that Purchaser and Seller may consummate the purchase and sale of the Property on mutually acceptable date (hereinafter, the “*Closing Date*”); and

**WHEREAS**, the Parties have agreed to the terms of this Agreement concerning the depositing of those funds and the holding of the same prior to the Closing Date.

**NOW, THEREFORE**, for and in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. Appointment of Escrow Agent. Seller and Purchaser hereby designate, constitute, and appoints Escrow Agent to be and serve as the escrow agent under this Agreement, and Escrow Agent hereby accepts such designation and appointment.

2. Deposit of Funds. With the execution of this Agreement, Purchaser will deliver to Escrow Agent the sum of Ten Thousand and NO/100 Dollars (\$10,000.00) (hereinafter, the “*Escrow Funds*”). The Escrow Funds represent an earnest money deposit (hereinafter, the “*Earnest Money Deposit*”) to enter into the PSA. The Escrow Funds shall be held in escrow by Escrow Agent in a non-interest bearing account, specifically Escrow Agent’s IOLTA trust account, until the Closing Date.

3. Receipt of Escrow Funds. Upon request, Escrow Agent agrees to provide to Seller a written receipt, confirming its receipt of the Escrow Funds upon its receipt.

4. Disbursement of Escrow Funds. In the event Purchaser and Seller are not able to proceed to Closing by the Closing Date, as the same may be extended, then Purchaser and Seller shall jointly direct Escrow Agent in writing to return the Escrow Funds to Purchaser, unless this Agreement is otherwise extended or modified in writing and signed by the Parties.

5. Cooperation. Purchaser and Seller agree that they will cooperate in submitting written instructions to Escrow Agent with regard to the disbursements to be made in accordance with this Agreement.

6. Duties of Escrow Agent are Merely Administrative. The duties of Escrow Agent under this Agreement will be entirely administrative in nature and not discretionary. Escrow Agent is obligated to act only in accordance with written instructions received by it as provided in this Agreement, and is authorized by this Agreement to comply with any orders, judgments, or decrees of any court, with or without jurisdiction, and will not be liable as a result of its compliance with the same. Purchaser and Seller understand and acknowledge that Escrow Agent shall not be held liable by either party in the event of the insolvency or failure of any financial institution in which the Escrow Funds are placed for deposit, so long as the financial institution's deposits are insured by the Federal Deposit Insurance Corporation (the "FDIC").

7. Reliance on Documents. Escrow Agent may rely absolutely upon the apparent genuineness and authorization of the signature and purported signature of any party upon any affidavit, instruction, notice, release, request or other documents delivered to it pursuant to this Agreement, except where contradicted by actual knowledge of Escrow Agent. Escrow Agent has no duty, responsibility, or obligation to determine the validity, authenticity, or propriety of any of the documents delivered to it as a prerequisite to any of its actions required pursuant to this Agreement, except where contradicted by actual knowledge of Escrow Agent.

8. Indemnification. Purchaser and Seller agree to and hold Escrow Agent harmless against any claims of wrongdoing in acting as Escrow Agent under this Agreement unless such wrongdoing constitutes gross negligence or intentional actions.

9. Notices. All notices and demands of any kind which any Party may be required or may desire to serve upon another Party in connection with this Agreement shall be in writing, signed by the Party or its counsel identified herein, and shall be served (as an alternative to personal service) by registered or certified mail, overnight courier service, or email or facsimile transmission (followed promptly by personal service or mailing of a hard copy), at the addresses set forth in Exhibit D to the PSA, or at such other address as has been substituted by notice given to the other Party in writing. Any such notice or demand so secured, shall constitute proper notice hereunder upon delivery to the United States Postal Service or to such overnight courier, or by confirmation of the email or facsimile transmission.

10. No Joint Venture. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any other party, as creating the relationship of principal and agent or of partnership or joint venture between Seller and Purchaser.

11. Representation of Purchaser. Seller acknowledges, consents, and agrees that Escrow Agent represents Purchaser and that in the event of a dispute between Purchaser and Seller hereto, that following Escrow Agent's transfer of the Escrow Funds to a successor escrow agent, return of the Escrow Funds to Purchaser, or other disposition of the Escrow Funds hereunder, that Escrow Agent may represent Purchaser in any dispute arising under this Agreement and/or under the PSA.

12. Headings. The captions used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

13. Entire Agreement. This Agreement contains the entire agreement between the parties, and no agreement, representation or inducement shall be effective to change, modify, or terminate this Agreement in whole or in part unless in writing and signed by the parties.

14. Governing Law. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of South Carolina. Venue for any action hereunder shall be in the county in which the Property is located.

15. Partial Invalidity. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

16. Successors and Assigns. Purchaser shall have the absolute right to assign its right, title, and interest in this Agreement to an entity owned or controlled by Purchaser or the principal of the Purchaser. The terms, provisions, and covenants contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, permitted assigns, successors in interest and legal representatives.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and together which shall constitute one and the same instrument.

***Remainder of Page Intentionally Left Blank***  
***\*\*\* Signatures on Following Page \*\*\****



**IN WITNESS WHEREOF**, Purchaser, Seller and Escrow Agent have executed this Escrow Agreement as of the day and year first written above.

**SELLER:**

**CITY OF CHARLESTON**, a South Carolina municipality

\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**PURCHASER:**

**EEMO, LLC**, a South Carolina limited liability company

\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**ESCROW AGENT:**

**THE WOODY LAW FIRM, LLC**, a South Carolina limited liability company

\_\_\_\_\_  
BY: Andrew L. McLester  
ITS: Member/Attorney

Date of Execution: \_\_\_\_\_

**EXHIBIT D**

Notice Addresses

**If to Seller:**

If to Seller:

City of Charleston  
Attn: Mayor  
P.O. Box 304  
Charleston, SC 29402  
Phone: 843-577-6970

With a copy to:

City of Charleston Real Estate Division  
Attn: Colleen Carducci  
2 George Street, Ste 2600  
Charleston, South Carolina 29401  
Phone: 843-724-7154  
E-mail: carduccic@charleston-sc.gov

and

City of Charleston Legal Department  
Attn: Corporation Counsel  
50 Broad Street  
Charleston, South Carolina 29401  
Phone: 843-724-3730

**If to Purchaser:**

EEMO, LLC  
Attn: Benjamin Navarro  
200 Meeting Street, Suite 206  
Charleston, SC 29401  
Phone: 843.266.1717  
Email: ben@sfg.com

with a copy to:

The Woody Law Firm, LLC  
Attn: Andrew L. McLester  
622 Johnnie Dodds Blvd.  
Mt. Pleasant, SC 29464  
Phone: 843.881.3700 x 407  
Email: andrew@woodylaw.com

Meadors, Inc.  
Attn: James Meadors  
2811 Azalea Drive

North Charleston, SC 29405  
Phone: 723.8585  
Email: jamescmeadors@aol.com



## RESOLUTION

Whereas, in 1984, the City commissioned a Master Drainage Study that identified drainage deficiencies and set forth a strategy for constructing and/or improving drainage infrastructure throughout the City; and

Whereas, over the course of years, the City has secured various sources of funding that enabled the implementation of the recommendations of the Study to include, by way of example, the Calhoun East project, the Market Street project, the Ardmore project and Byrnes Down projects; and

Whereas, the City continues to implement the recommendations of the Master Drainage Study and is now pursuing the construction of the Calhoun West Drainage project (the "Project"); and

Whereas, the City has identified properties where easements or fee interests are required in order for the Project to be successfully implemented; and

Whereas, as these properties are key to the success of the Project, City Council deems it necessary and proper that easements or fees in these properties, as applicable, be acquired by way of negotiation, if possible, and if not, by way of eminent domain proceedings.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Charleston that negotiations to purchase easements or fee interests, as applicable, in the following properties for purposes of stormwater drainage be earnestly pursued, to wit; TMS No. 460-12-02-053 and 460-12-02-054; and it is further

RESOLVED, that should negotiated purchases prove unavailing, the use of eminent domain to acquire easements or fee interests, as applicable, in the aforesaid properties for purposes of stormwater drainage is hereby authorized.

DONE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018

---

John J. Tecklenburg, Mayor

---

Vanessa Turner Maybank, Clerk of Council

e(ii)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: Forest Acres Phase 2a

TMS: 4180500045 4180500046, 4180500060, 4180500299, 4180500300, 4180500301,  
4180500302, 4180500303, 4180500304, 4180500305, 3500400058, 3500400002  
3500400003, 3500400004, 3500400005, 3500400006

PROPERTY OWNER: Multiple

ACTION REQUEST: Request authorization for the City to acquire by negotiated purchase or  
condemnation the easements or deed acquisitions required for the  
Forest Acres Phase 2a storm water drainage project.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Francine Cantorelli</u>	<input type="checkbox"/>
Chief Financial Officer	_____	<input type="checkbox"/>
Director Real Estate Management	_____	<input checked="" type="checkbox"/>
_____	_____	<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: Forest Acres Phase 2a

TMS: 4180500045 4180500046, 4180500060, 4180500299, 4180500300, 4180500301,  
4180500302, 4180500303, 4180500304, 4180500305, 3500400058, 3500400002  
3500400003, 3500400004, 3500400005, 3500400006

PROPERTY OWNER: Multiple

ACTION REQUEST: Request authorization for the City to acquire by negotiated purchase or  
condemnation the easements or deed acquisitions required for the  
Forest Acres Phase 2a storm water drainage project.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

### **ACTION:** What action is being taken on the Property mentioned?

<input checked="" type="checkbox"/>	<b>ACQUISITION</b>	Seller (Property Owner)	<u>Multiple</u>	Purchaser	<u>City of Charleston</u>
<input type="checkbox"/>	<b>DONATION/TRANSFER</b>	Donated By: _____			
<input type="checkbox"/>	<b>FORECLOSURE</b>	Terms: _____			
<input type="checkbox"/>	<b>PURCHASE</b>	Terms: _____			
<input type="checkbox"/>	<b>CONDEMNATION</b>	Terms: _____			
<input checked="" type="checkbox"/>	<b>OTHER</b>	Terms: <u>Acquisition by negotiated purchase or condemnation of permanent</u> <u>easements required for the Forest Acres Phase 2a storm water</u> <u>drainage project.</u>			

<input checked="" type="checkbox"/>	<b>EASEMENT</b>	Grantor (Property Owner)	<u>Multiple</u>	Grantee	<u>City of Charleston</u>
<input checked="" type="checkbox"/>	<b>PERMANENT</b>	Terms: <u>Acquisition by negotiated purchase or condemnation of permanent</u> <u>easements required for the Forest Acres Phase 2a storm water</u> <u>drainage project.</u>			
<input type="checkbox"/>	<b>TEMPORARY</b>				



## COMMERCIAL REAL ESTATE FORM

Terms: \_\_\_\_\_

☐

**LEASE**

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

☐

**INITIAL**

Terms: \_\_\_\_\_

☐

**RENEWAL**

Terms: \_\_\_\_\_

☐

**AMENDMENT**

Terms: \_\_\_\_\_

☐

**Improvement of Property**

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

---

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: \_\_\_\_\_

Signature: \_\_\_\_\_

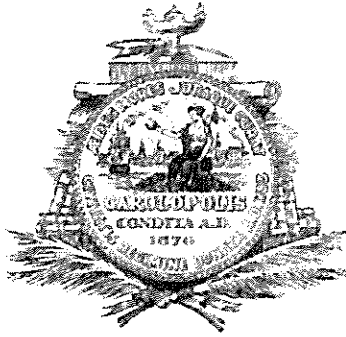
Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

---

**NEED:** Identify any critical time constraint(s).





## RESOLUTION

Whereas, in 1984, the City commissioned a Master Drainage Study that identified drainage deficiencies and set forth a strategy for constructing and/or improving drainage infrastructure throughout the City; and

Whereas, over the course of years, the City has secured various sources of funding that enabled the implementation of the recommendations of the Study to include, by way of example, the Calhoun East Drainage Improvement Project, the Market Street Drainage Improvement Project, the Ardmore Drainage Improvement Project and the Byrnes Down Drainage Improvement Project; and

Whereas, the City continues to implement the recommendations of the Master Drainage Study and is now pursuing the construction of Phase 2A of the Forest Acres Stormwater Drainage Improvement Project (the "Project"); and

Whereas, the City has identified properties where easements or fee interests are required in order for the Project to be successfully implemented; and

Whereas, as these properties are key to the success of the Project, City Council deems it necessary and proper that easements or fees to these properties, as applicable, be acquired by way of negotiation, if possible, and if not, by way of eminent domain proceedings.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Charleston that negotiations to purchase easements or fee interests, as applicable, in the following properties for purposes of stormwater drainage be earnestly pursued, to wit; TMS No. 418-05-00-045; 418-05-00-046; 418-05-00-060; 418-05-00-299; 418-05-00-300; 418-05-00-301; 418-05-00-302; 418-05-00-303; 418-05-00-304; 418-05-00-305; 350-04-00-058; 350-00-00-002; 350-04-00-003; 350-04-00-004; 350-04-00-005 and 350-04-00-006; and it is further

RESOLVED, that should negotiated purchases prove unavailing, the use of eminent domain to acquire easements or fee interests, as applicable, in the aforesaid properties for purposes of stormwater drainage is hereby authorized.

DONE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018

---

John J. Tecklenburg, Mayor

---

Vanessa Turner Maybank, Clerk of Council

**REAL ESTATE COMMITTEE  
GENERAL FORM**

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 815 Colony Drive

TMS: 4181500017

PROPERTY OWNER: Andrew and Karen Harmon

ACTION REQUEST: Request authorization to acquire a new 10 foot storm water easement from Andrew and Karen Harmon on their property located at 815 Colony Drive.

ORDINANCE: Is an ordinance required? Yes ☐ No ☒

COORDINATION: The request has been coordinated with:  
*All supporting documentation must be included*

	Signature	Attachments
Department Head		<input type="checkbox"/>
Legal Department	<u>Frances J. Carlucci</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

FUNDING: Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved? Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. 0503.52 Acct: 53015

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

NEED: Identify any critical time constraint(s).

\*Commercial Property and Community & Housing Development have an additional form.

**COMMERCIAL REAL ESTATE FORM**

TO: Real Estate Committee DATE: March 13, 2018

FROM: Colleen Carducci DEPT: BFRG

ADDRESS: 815 Colony Drive

TMS: 4181500017

PROPERTY OWNER: Andrew and Karen Harmon

ACTION REQUEST: Request authorization to acquire a new 10 foot storm water easement from Andrew and Karen Harmon on the property located at 815 Colony Drive.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

**ACTION:** What action is being taken on the Property mentioned?

☐ **ACQUISITION** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

☐ **FORECLOSURE**  
Terms: \_\_\_\_\_

☐ **PURCHASE**  
Terms: \_\_\_\_\_

☐ **CONDEMNATION**  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_

☒ **EASEMENT**

Grantor (Property Owner)	<u>Andrew and Karen Harmon</u>	Grantee	<u>City of Charleston</u>
-----------------------------	--------------------------------	---------	---------------------------

☒ **PERMANENT**

Terms: Permanent storm water easement as shown on the attached exhibit

☐ **TEMPORARY**  
Terms: \_\_\_\_\_

**COMMERCIAL REAL ESTATE FORM**

☐

**LEASE**

Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

☐

**INITIAL**

Terms: \_\_\_\_\_

☐

**RENEWAL**

Terms: \_\_\_\_\_

☐

**AMENDMENT**

Terms: \_\_\_\_\_

☐

**Improvement of Property**

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

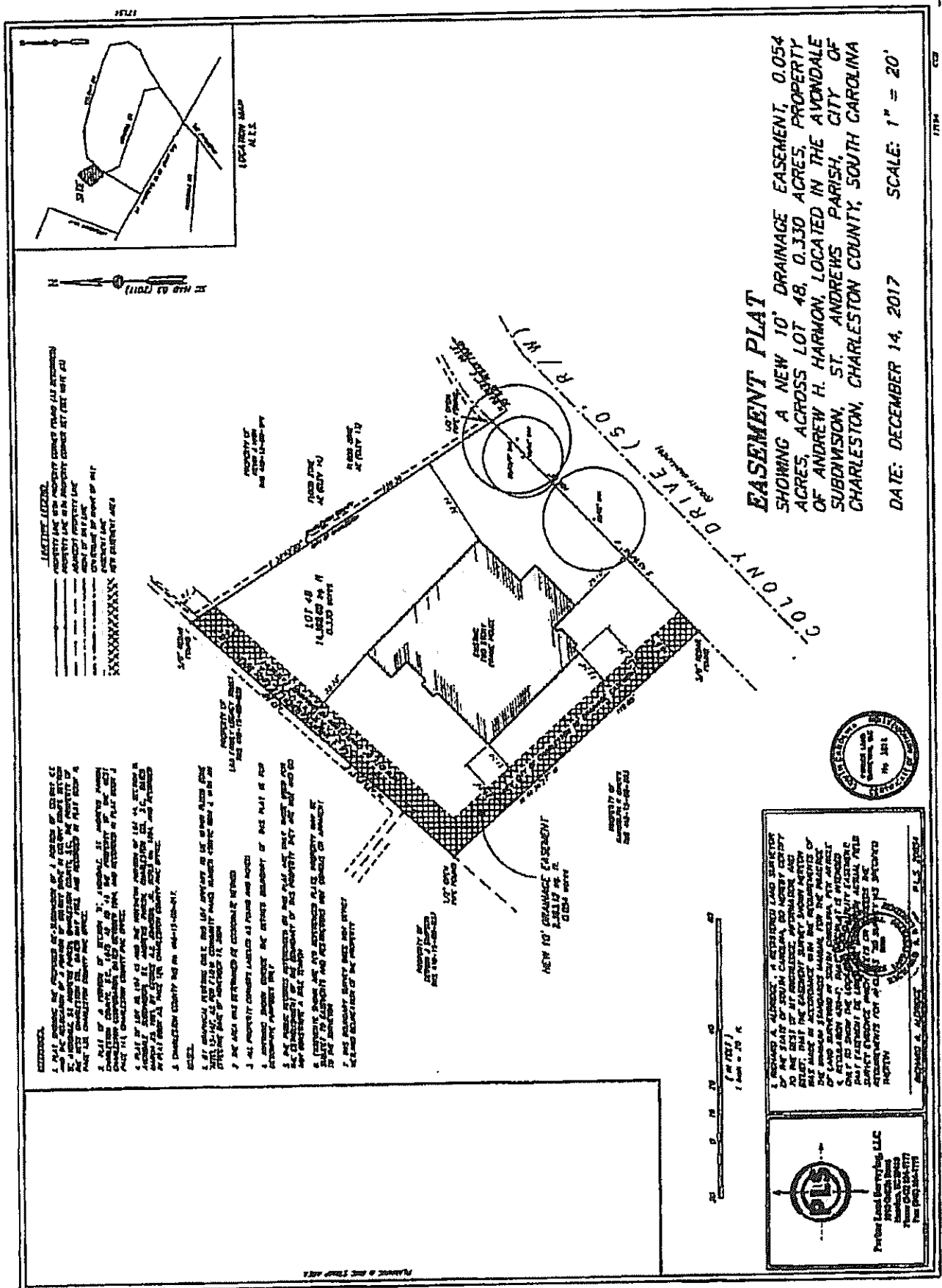
Results: \_\_\_\_\_

Signature: C. Carducci

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).







f.)

Ratification  
Number \_\_\_\_\_

## AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS PROPERTY ON ZELASKO ROAD (1.19 ACRE) (TMS# 313-00-00-335), JOHNS ISLAND, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 5. THE PROPERTY IS OWNED BY LARRY E. MCCUTCHEN.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 5 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, property on Zelasko Road, (1.19 acre) is identified by the Charleston County Assessors Office as TMS# 313-00-00-335 (see attached map) and shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_  
in the Year of Our Lord,  
2018, in the \_\_\_\_\_ Year of the Independence of the  
United States of America.

By:

\_\_\_\_\_  
John J. Tecklenburg  
Mayor

Attest:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

# Annexation Profile

**Parcel Address:** Zelasko Road

**Presented to Council:** 3/13/2018

**Status:** Received Signed Petition

**Owner Names:** Larry E. McCutchen

**Year Built:** NA

**Number of Units:** 0

**Parcel ID:** 3130000335

**Number of Persons:** 0

**Race:** Vacant

**Acreage:** 1.19

**Mailing Address:** 2633 Lani Ct

**Current Land Use:** Vacant

**Address:** Charleston, SC 29414

**Current Zoning:** OD-MHC

**Requested Zoning:** BP

**City Area:** Johns Island

**Recommended Zoning:** BP

**Subdivision:**

**Appraised Value:** \$37,145.00

**Council District:** 5

**Assessed Value:** \$2,230.00

**Within UGB:** Yes

**Stormwater Fees:** 0.00

<b>Police</b>	Located in existing service area - Team 3
<b>Fire</b>	Located in existing service area - Station 17
<b>Public Service</b>	
<b>Sanitation</b>	Located in existing service area. Property is undeveloped.
<b>Storm Water</b>	Contiguous to existing service area.
<b>Streets and Sidewalks</b>	No additional City-maintained right-of-way
<b>Traffic and Transportation</b>	
<b>Signalization</b>	None
<b>Signage</b>	None
<b>Pavement Markings</b>	None
<b>Charleston Water Systems</b>	St. Johns Water Service Area, CWS Sewer Service Area.
<b>Planning</b>	
<b>Urban Growth Line</b>	Property is an undeveloped site within the line.
<b>City Plan (Century Five)</b>	Development and zoning are consistent with the City Plan.
<b>Parks</b>	Already being served.

**Notes/Comments:**

**City Plan  
Recommendation:**

The existing development and proposed zoning is consistent with the City Plan.  
Recommend annexation.



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON ) PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

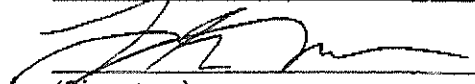
SAID PROPERTY, located on Johns Island (approximately 1.19 acres) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 313-00-00-335 (Zelasko Road).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

Dated this 26th day of  
February, 2018

FREEHOLDERS (OWNERS) SIGNED

DATE OF SIGNATURE

  
(Signature)

3-3-2018  
(Date)

LARRY E. MCGITCHEN  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

# City of Charleston Annexation Map

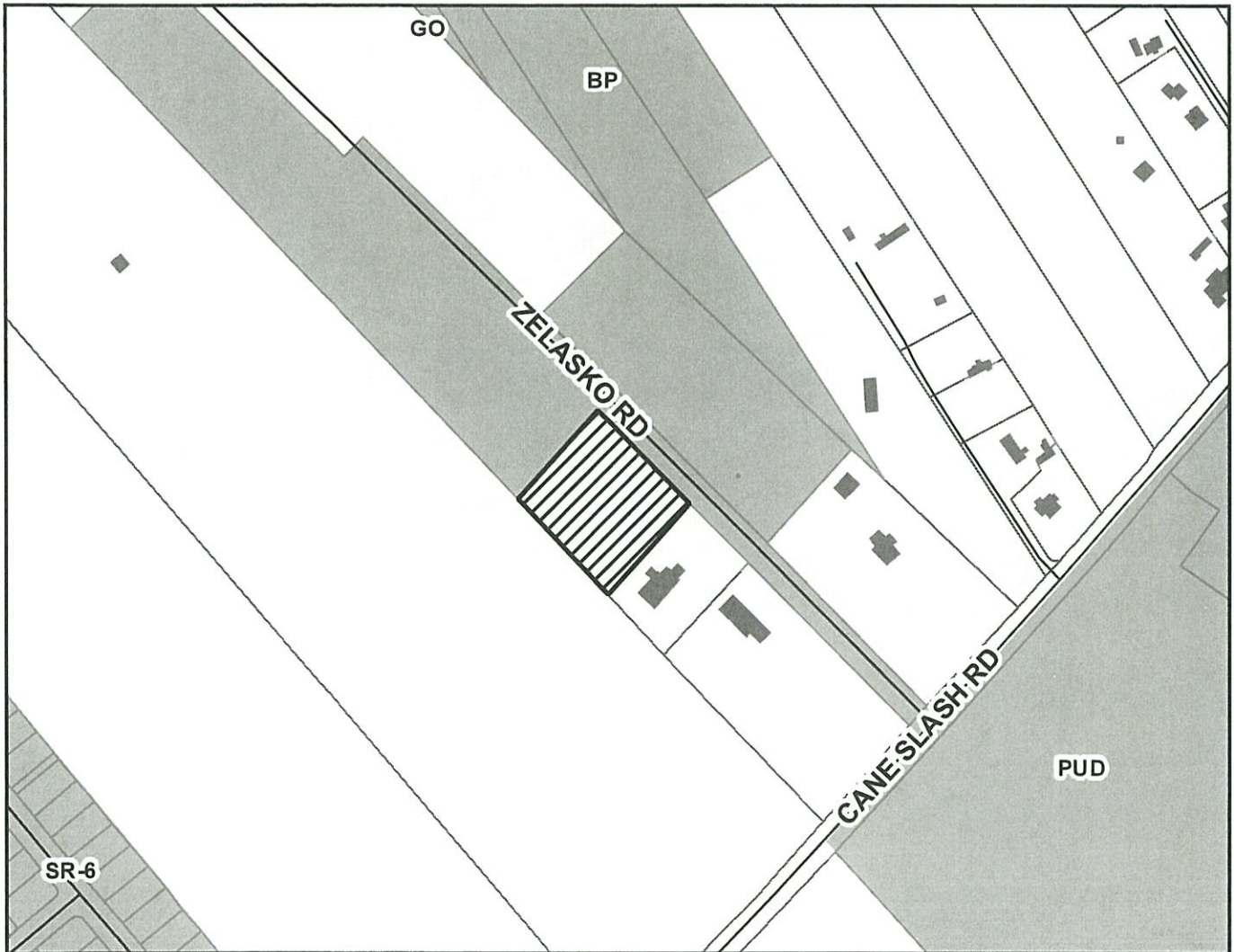
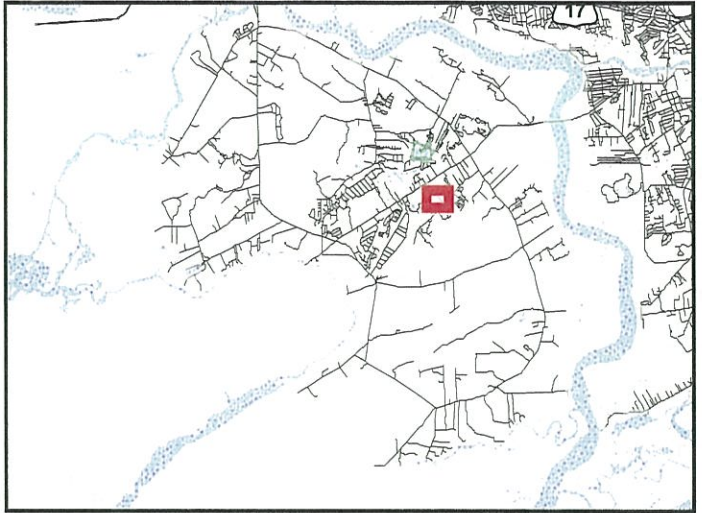
Parcel Address:  
Property on Zelasko Rd

TMS #:  
3130000335

Acreage: 1.19

City Council District: 5

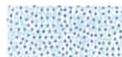
Johns Island



Subject Property



Corporate Limits  
City of Charleston



Water

